REPORT

OF THE TRIAL OF

CASTNER HANWAY

FOR

TREASON,

IN THE RESISTANCE OF THE EXECUTION OF

THE FUGITIVE SLAVE LAW

OF SEPTEMBER, 1850.

BEFORE JUDGES GRIER AND KANE,

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

HELD AT PHILADELPHIA IN NOVEMBER AND DECEMBER, 1851.

TO WHICH IS ADDED

AN APPENDIX,

CONTAINING THE LAWS OF THE UNITED STATES ON THE SUBJECT OF FUGITIVES FROM LABOR,
THE CHARGES OF JUDGE KANE TO THE GRAND JURIES IN RELATION THERETO,
AND A STATEMENT OF THE POINTS OF LAW DECIDED BY THE COURT DURING THE TRIAL.

BY JAMES J. ROBBINS,
OF THE PHILADELPHIA BAR.

FROM THE NOTES OF

ARTHUR CANNON AND SAMUEL B. DALRYMPLE,

PHONOGRAPHIC REPORTERS APPOINTED BY THE COURT FOR THIS CASE.

PHILADELPHIA:
KING & BAIRD No. 9 SANSOM STREET.
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PREFACE.

THE interest manifested in this Trial, has induced the Reporter to give it to the People in a form in which a report of it can best be preserved for future reference. The Act of Congress passed in 1850, relative to the surrender of fugitives from labor, had met in many parts of the Union an expression of deep and determined opposition; some had expressed their belief that it was unconstitutional, others that it was in violation of the law of God (or, as it was termed, "the higher law,") and many had counselled resistance to all attempts to execute process issued under it.

An attempt to execute such process upon alleged fugitive slaves in Lancaster County, in this State, was met by a thorough, determined, and organized resistance, resulting in the defeat of the officers charged with the execution of the warrants and the murder of one of the claimants of the fugitives. The numbers engaged in this proceeding, and the manifest preparation which had been made for any such occasion, induced the officers of the law to institute prosecutions for the highest offence against the Government, namely TREASON; and the ability which marked the Trial throughout, the patient attention of the Judges, the eloquence and learning of the Counsel, and the full examination of every matter of fact and law in any manner involved, gave to the trial a deep and abiding importance, such as will make its perusal interesting to the general reader, and of indispensable use to the Legal Profession. The Reporter claims credit for nothing but accuracy in the report of the testimony, speeches, charges and proceedings; and for that accuracy he is mainly indebted to those who, by the valuable art of Phonography, were enabled to transfer to paper every expression. By the kindness of both Court and Counsel, he has been enabled to add much that is really valuable to the mere report; and he now submits this book to the Public, as the faithful narrative of an item in our country's history not soon to be forgotten, and the salutary influence of which will be for a long time remembered.

TREASON CASES.

REPORTED PHONOGRAPHICALLY BY

ARTHUR CANNON AND SAMUEL B. DALRYMPLE,

SWORN REPORTERS, APPOINTED BY THE GOVERNMENT.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, in the Third Circuit.

OCTOBER SESSIONS, 1851.

BEFORE JUDGES GRIER AND KANE.

Philadelphia, Monday, November 24, 1851.

[THE COURT WAS OPENED AT ELEVEN O'CLOCK.]

CLERK. "All Petit Jurors summoned here this day, will please answer to their names."

The list of jurors was called, and seventy-eight answered to their names.

JUDGE GRIER. Now call the defaulters, and those who are in default until to-morrow morning, will be fined a hundred dollars.

MR. E. INGERSOLL. "If the Court please, I present the excuse of Thomas McKean as a juror. I hold in my hands a certificate, from a physician, that he is not able to attend."

JUDGE KANE. "Judge Bell, of Bucks County, is upon the panel, and as he is holding Court there, he has asked leave of absence until Monday next."

JUDGE GRIER. "On the certificate of his physician, Mr. Thomas McKean being incapacitated to perform the duties of a juror, is excused. If he recover his health, and is able to attend hereafter, we hope that he will be able to return, as we may have a very long term before us. The marshal will be pleased to mark all those gentlemen who are excused, and those who do not answer by to-morrow morning, will be fined one hundred dollars, as a matter of course. We are compelled to enforce the attendance of jurors here, unless they are sick.

JUDGE KANE. "We have the certificate of a physician, that Mr. Platt's health is such, that it would be extremely hazardous, for him to serve as a juror."

JUDGE GRIER. "Mark him excused. It will be an understanding, that those who have applied, and are excused on account of sickness, if they should recover sufficiently, in a short space of time, as this jury will probably have to be on the ground till next Spring, they must be here as soon as possible."

MR. WILLIAMS. "Mr. Platt is subject to violent headache, and he has desired me to mention it to the Court."

MR. R. R. SMITH. "I have an application from Mr John Richardson, and there are two reasons why he should be excused. First, he is President of the Bank of North America, and it stops all the business of the Bank if he is not there. Secondly. Here is a certificate from a medical gentleman, that he is subject to a bronchial affection, and that confinement in a warm room, would be sure to cause sickness."

JUDGE KANE reads the certificate.

MR. R. R. SMITH. "I requested him to have this certificate from his physician. He is President of the Bank, and when he is away, it stops the business."

JUDGE GRIER. "Could not the Cashier attend to the business of the bank, in the absence of the President?"

MR. SMITH. "It is not so in this case; he is the only person who is authorized to attend to the discounting; and as Mondays and Thursdays are the discount days of the bank, he would be much obliged to your honors, if you would excuse him on those days."

JUDGE GRIER. "I could get a certificate of that sort from a physician, to excuse my attendance; and I am sure, if we get too lax, the gentlemen will all say, as was said on a certain other occasion, "I pray thee, have me excused."

MR. R. R. SMITH. "His position as President of the bank is such, that it would be interfering with the convenience of the public, to a very great extent; It is not private business."

JUDGE KANE. "I doubt very much, whether we shall find an adequate number of jurors of the class summoned by the Marshal, whose business from home, would not be prejudicial to the community there.

MR. R. R. SMITH. "Will your honors excuse him till next Tuesday."

JUDGE KANE. "He is excused till Tuesday of next week."

MR. J. CADWALADER. "I would state, that in the case of John R. Neff, he, to my knowledge, was detained here unavoidably, from the performance of duties in Cincinnati, which he left to perform, before the service of notice of his duty as juror for this term. I can make legal proof of it, if the Court require it; but I know it of my own knowledge.

The other case I would present, is that of

George Cadwalader, another juror. Whether he has a proper excuse or not, he will state himself to-morrow. I only wish to say, that he has not received the notice on account of absence; he will return to-day, and will present himself to-morrow. I ask his case to be continued till then. As to John R. Neff, he went away to Cincinnati before the notice was served."

JUDGE GRIER. "That is sufficient, he is excused permanently. Stop, I have a word if you please; if he returns here, and has not some other excuse, we shall then demand his attendance."

MR. CADWALADER. "Should he return, which however, he will not be able to do, he will attend to his duty."

MR. J. W. ASHMEAD. "Here is the case of a juror named Charles Massey, who has handed me the certificate of a physician, which certifies that his condition is such, that it will be injurious to his health, for him to attend. Mr. Massey will present his case himself to the Court.

MR. MASSEY. "My disease is *angina pectoris*, I have to walk very slowly, and then frequently have to stop."

MR. ASHMEAD. "I have nothing to do, but to present the certificate at the request of the juror. Your honor has seen what is upon the face of it."

MR. MASSEY. "Any violent exertion will bring on the disease."

JUDGE GRIER. "But sitting still would not bring it on."

MR. MASSEY. "Any agitation will bring it on."

JUDGE GRIER. "I am in nearly the same situation myself."

MR. MASSEY. "I am debilitated, or otherwise, I should have no objection at all; the disease comes on very suddenly."

JUDGE GRIER. "We will consider it; if you should happen to be called on a jury, and not challenged, then you can raise the point, and we will see. We will hold it under consideration."

MR. MASSEY. "In addition to that, there is a sickness in my family, my wife is sick."

MR. THADDEUS STEVENS. Mr. Beck, from Lancaster county, desires me to mention to the Court that he ought to be excused; he is the principal of a large boarding school, which is now full, and his absence will break up a whole community—it will be a kind of treason, and he thinks that he ought to be excused. He will state his own case. I know he is principal of a large school at Litiz, which is now in session."

JUDGE GRIER. "I suppose the Marshal did not know that."

MR. STEVENS. "I wonder at the Marshal's putting him on. Will the Court hear Mr. Beck?"

MR. DAVID PAUL BROWN. "The Marshal did it upon the principle that the school-master should be abroad."

MR. BECK. "It is almost an impossibility for me to leave; the institution is very large. I have a great many pupils from different parts of the United States, and the responsibility of their improvement altogether rests on me."

MR. STEVENS. "Is it now in session?"

MR. BECK. "Yes sir, in session at Litiz, in Lancaster county."

JUDGE GRIER. "You ought not to have been summoned. That is a public duty, affecting others besides yourself; if it were your private business, we should not excuse you.'

MR. BROWN. "The school cannot get along without him."

JUDGE GRIER. "The gentleman is excused."

MR. JAMES COOPER. "Judge Hammer of Schuylkill county is in attendance, but he will be glad if your honors will allow him to go home, as his wife is very ill. He does not desire to absent himself altogether, but would return."

JUDGE GRIER. "If she is dangerously ill, it would be some reason for his absence, but not altogether."

MR. COOPER. "State what is the condition of your wife's health."

MR. HAMMER. "My wife's health is in a very precarious situation; I am in hopes it may get better in about a week.'

JUDGE GRIER. "Will an excuse for two weeks satisfy you?"

MR. HAMMER. "Yes, sir."

JUDGE GRIER. "Excuse him for two weeks."

JUDGE KANE. "Samuel Breck states that he is hard of hearing, and in the eighty-first year of his age."

JUDGE GRIER. "That is sufficient, undoubtedly."

MR. CADWALADER. "He is a man who never shrank from any public duty so long as he was able to perform it.'

JUDGE GRIER. "Mr. Breck is excused."

MR. STEVENS. "Mr. Brodhead desires to state his case to the Court."

MR. BRODHEAD. "I would state to the Court that I am subject to violent attacks of sick headache, as often as once in eight or ten days, which cuts me down for a day or two. I have also had several attacks of neuralgia in the head, which have greatly impaired my hearing; and I should labor under very great disadvantage in consequence of it. My hearing is quite imperfect. For a long time I have been deficient in one ear, and within a few months the other has also been affected. I have been sitting back, and I have not heard what has been going on, except very slightly."

JUDGE GRIER. "He will have to be excused." Judge Kane reads a letter from Mr. Toland

JUDGE KANE. "He is a neighbor of mine—his attack is of rheumatic gout—I trust, however, he will get well before the completion of the panel.

JUDGE GRIER. "I don't think the fact that he has been admitted to the bar prevents him from being a juror on that account. If he is a member of the bar in full practice he ought to be excused, but I believe he is not in practice. But, on account of his ill-health, we will excuse him for two weeks."

MR. FRALEY. "May it please your honors, I consider myself engaged in a public employment of such a nature as to prevent my attendance as a juror without great detriment to the public interests. I am obliged to perform official acts

every few minutes in the day, and there is no provision for a substitute in my absence."

JUDGE GRIER. "We have just refused to excuse the president of a bank."

MR. FRALEY. "His employment is different from mine. I am president of the Schuylkill Navigation Company. I have a large body of men under my control, and am obliged to give answers upon the executive business of the company, which no one else but me can give, in the course of the day. There are hardly five minutes in the day but what I am called upon to perform some duty that cannot be performed by any one else."

JUDGE GRIER. "Will not your canal be frozen up in a few days."

MR. FRALEY. "I hope not, sir; we do not intend to allow it to freeze, if we can help it. I have other public employments of which Judge Kane is perfectly aware, that require my attendance."

JUDGE KANE. "I think if the Schuylkill navigation were completely frozen up, we might have the services of Mr. Fraley."

Excused for two weeks.

MR. PENROSE. "James McConkey asks the Court to excuse him on two grounds. First, he is hard of hearing; and next, he is a deputy-postmaster, and required to be in attendance to discharge the duties of his office. I know the fact of his being hard of hearing."

JUDGE GRIER. "We will have to excuse him."

JUDGE KANE. "Here is an application from Mr. John Darby, who sends a physician's certificate that he has been feeble for a number of years past, and is somewhat hard of hearing; and in consequence of this he has been excused from serving on juries in Franklin county. Signed by two physicians. George Chambers certifies that from infirm health and difficulty of hearing, he is disqualified from serving as a juror."

Excused.

MR. PENROSE. "I am also instructed to say that Joseph Culbertson is in infirm health, and subject to vertigo. He is seized without a moment's notice, and is not in attendance to-day."

JUDGE KANE. "His letter says he requests to be excused for the following reasons: First, I am and have been subject to vertigo, which is very severe, and my hearing is very much impaired, which is not uncommon in a man of my age, being 73 years old. I beg to be excused. In order that no inconvenience may be suffered on account of my declining, I suggest James J. Kenneday, Esq., of Chambersburg, to serve in my place—as being better qualified than I am."

JUDGE GRIER. "Excused for age, hardness of hearing, and vertigo."

MR. D. P. BROWN. "I am sorry to be called upon to add to the number of deaf men, or those getting deaf. I think they are all getting deaf, but I thank Heaven they are not dumb. It is the case of Mr. Caleb N. Taylor, of Bucks county, who is much afflicted with deafness—not of a temporary character—but it has been of long continuance with him. Some grow deaf about this time, but it is not so with him. I suppose that on the principle which you have adopted, you will excuse him. He is present."

MR. TAYLOR. "I am hard of hearing at the best of times, and at present I labor under a very severe cold in the head, and it affects my hearing; and I should be unwilling to sit upon a case of so great importance, unless I could hear all the evidence presented."

JUDGE GRIER. "Your disease has become epidemic to-day. Mark him excused."

JUDGE KANE. "Joseph D. Brown.—Dr. Parrish certifies that from his knowledge of Mr. Brown's health, having been his physician for a number of years, he considers him unfit for the arduous duties of a trial of this kind. His deafness and defective memory would of themselves make him inadequate. This gentleman waited upon me, and his whole appearance confirms this statement."

Excused.

JUDGE KANE. "Judge Bell, of Berks county, and Judge Leiper, of Delaware county, are both of them actually holding a court, and closing up the business before leaving the bench, and ask to be excused for this week."

JUDGE GRIER. "Mark them excused for one week."

JUDGE KANE. "Here are two letters relating to Valentine Hummel. He is now confined by a serious attack of disease, and will probably be so for some time. Signed by his physician."

JUDGE GRIER. "Excused for sickness for two weeks."

JUDGE KANE. "An application was made on Friday or Saturday by Mr. Brewster, representing General Cameron, who had remained here for several days, intending to be on the jury, but finding himself very unwell, he was obliged to go home. If he were excused for a few days, I presume he would be able to attend."

JUDGE GRIER. "He will be excused for one week, unless his sickness should continue;—he must then get a new excuse."

JUDGE KANE. "Charles Saylor, of Saylorsburg, Pennsylvania, announces that he cannot attend, being the postmaster, and also other matters."

JUDGE GRIER. "United States' officers, who have daily duties to perform, ought not to have been summoned. They are always excused on State juries. Excuse him."

JUDGE KANE. "Mr. Caleb Cope addresses a letter to the Court, in which he says, that he has thought it proper to submit to tho Court a certificate from his family physician of his ill-health, and accordingly encloses it. He feels reluctant to seem to shun a public duty, but a long period of bodily infirmity has obliged him to resign from any public duties in which he was engaged. He has not been on a jury since Judge Duncan's time. His family physician, Dr. Gerhard, certifies that he has from time to time consulted me in reference to his health, and from my knowledge of the tendency of his disease, when he is confined in a close room, I should think the services of a juror would be injurious to him."

JUDGE GRIER. "The case will have to be passed for the present—he cannot be excused on that certificate. The gentleman is not over sixty years of age."

MR. CADWALADER. "I wish to present to the Court the case of Mr. Lawrence Lewis. He supposed that his case would be attended with less difficulty than now appears. He did not suppose such a number of applications would be presented. He is the president and active executive officer of one of our Mutual Insurance Companies, and is at this season particularly engaged. He, however, does not desire, observing how many have been excused, to be relieved from the performance of a public duty, but limits his application, and asks to be excused for the first fortnight, and he will give his attendance afterwards—if the Court will indulge him now."

JUDGE KANE. "Would it not be more convenient for Mr. Lewis to be excused at the end of a fortnight than now."

MR. LEWIS. "No, sir; there are peculiar reasons why I should be excused now. It is on account of official duties that I ask it, not private."

JUDGE GRIER. (To the Marshal.) "How many are excused?"

MARSHAL. "Nineteen;—some permanently, and some for two weeks. We have summoned one hundred and sixteen, and eighty-one have answered to their names this morning. A large number will be in attendance this afternoon or to-morrow morning."

JUDGE GRIER. "There will be a panel of sixty, at least, drawn to-day or to-morrow, so that we may be able to obtain a jury—and if we have a panel of sixty or seventy to draw from to-morrow, we shall be able to excuse some till this day two weeks. We are very desirous of accommodating those gentlemen who will do us the favor of attending as jurors. The gentleman (Mr. Lawrence Lewis) will give his attendance this day two weeks."

Give those who have not answered to their names till to-morrow.

Defaulting jurors called.

MR. COOPER. "Robert Smith, a juror called, who does not answer, wished me to say, that it will not be possible for him to arrive in town, before to-morrow morning."

JUDGE GRIER. "If he comes then, it will be sufficient.

MR. DISTRICT ATTORNEY ASHMEAD. "Now that the panel of jurors has been called over, and we are able to tell pretty nearly which of them are in attendance, I propose to-morrow morning, to arraign one of the defendants, and to proceed then with the trial of these cases, beginning, as at present advised, with Castner Hanaway, so that on the part of the government, we shall be ready to go on with these cases to-morrow morning."

JUDGE GRIER. "Have the defendants been arraigned, and plead?"

MR. ASHMEAD. "I desire it, however, to be understood in making this statement, that while it is my present impression to proceed, I am not to be precluded from the right, possibly, to move to quash this array. I mean to say, that there may be some preliminary matters I may bring before the Court in the morning, if not, we will proceed."

JUDGE GRIER. "Have any of the defendants been arraigned for trial?"

MR. ASHMEAD. "I propose arraigning each defendant as he is called upon for trial.

JUDGE GRIER. "Adopt your own course. In a case of this importance, I do not feel disposed to hurry or drive either party—though I must confess my extreme desire to be in Washington this day two weeks, and I hope to have at least one case disposed of before then."

MR. STEVENS. "I hope it will not take that time to get through with one case—in our country, we hang a man in three days, and I hope these gentlemen will not take so long a time."

MR. BRENT. "This is a civilized country."

JUDGE GRIER. "Have you any proposition as to the hour?"

MR. ASHMEAD. "I would suggest to the Court, now that the reporters have been employed, and will take down the testimony in short hand, and will be sworn, so that it will save us the time in taking minutes, and we had better begin by making the time at the usual hours from ten to three, and we can ascertain what progress we make in the case, and if we find it necessary to change it, I will cheerfully submit"

JUDGE GRIER. "I was thinking of having an evening session. It will be as hard on me as on the counsel."

MR. J. M. READ. "If the stenographic or phonographic reporters are employed, it is necessary to make the sessions a little shorter, for they have to write it out, or else it would be of no advantage to the Court or ourselves."

JUDGE KANE. "Arrangements have been made that may perhaps relieve us from this embarrassment. We have two reporters who will alternate, and the understanding is, that we shall have, at the opening of the Court in the morning, a sufficient number of copies in print, with broad margins, for the use of counsel and the Court. So that there will be no necessity of taking notes for ourselves; which will greatly expedite the matter."

MR. J. M. READ. "With all the improvements on the subject—I happened to be in the District Attorney case where this plan was adopted, and it facilitated our progress so long as we were in session, and you are able to do double the amount of labor in the same time. But then it requires a certain space of time to make it into English, and in a very few days both these gentlemen would be worked out, and they would be of no use at all."

JUDGE GRIER. Is there any motion or objection to be made in regard to suffering the printers to take notes and publish the testimony? Are there any suggestions on the subject? I have a precedent in my predecessor's time."

MR. ASHMEAD. "So far as the government is concerned, I have no suggestions to make on that subject, being perfectly willing that the testimony should be printed as delivered in Court, so that on that point, I do not desire to call the attention of the Court, there being no difficulty in the way of letting it go to the public."

JUDGE KANE. The greatest difficulty I apprehend, if we are to go through this long calendar of indictments, will be in procuring jurors as we approach the close of our calendar, if the evidence is to be known to the public."

JUDGE GRIER. "After that, we may send out as many venires as we please, and unless we find those who cannot read or hear, we will find none who have not made up their minds. But if there is no motion on either side, nothing will be done on the subject by the Court."

MR. BROWN. "We appear to have those who cannot hear, already."

MR. ASHMEAD. "As far as the jurors are concerned, there is no difficulty from the number of cases; if they sit upon one of these trials, it will not of necessity make them incompetent to sit upon others. In Wilson's case, jurors who had convicted Porter, afterwards sat upon Wilson's case."

MR. READ. "Unless they had made up their minds in his case."

JUDGE KANE. "In that very case, the Court entertained a motion to prevent publication, and they did not finally make an order, in consequence of the gentlemen of the press in attendance consenting, without the action of the Court, that there should be no publication. Judge Baldwin expressed a reluctance to make such an order, but invited them to adopt a course they would have pursued in case an order was made."

MR. STEVENS. "If the Court please, it strikes me that it would be impossible to prevent letter-writers from sending to other cities, an account of the proceedings, and publishing them, and whether it would not be better to be understood that the testimony taken by those employed to take it, should be published, hoping they will publish nothing else; and it will be a fairer report, for it is impossible to prevent letters being written to a distance, and probably they would not give a proper state of facts, not having an opportunity to hear as well."

JUDGE GRIER. "I suppose we could not prevent jurors from reading the newspapers, but I presume that gentlemen of the high standing and intelligence that we have here, will not be affected by them. If there is no motion made, we will proceed as in other cases; while the press may be allowed to publish the testimony as they choose, we hope they will not undertake to make any comments upon it. Are there any other preliminary matters you wish to bring before the Court?"

MR. ASHMEAD. "There is nothing that at this moment I desire to bring to the notice of the Court. We shall be ready to proceed to-morrow morning."

JUDGE GRIER. "If you have nothing further in this case to do, the Court will be adjourned till 10 o'clock to-morrow morning"

MR. STEVENS, "I do not understand yet whether the District Attorney will move to quash the array. If he will, we should have a motion to make, but it would be premature now."

MR. ASHMEAD. "Whatever motion I make upon the subject, I will make to-morrow morning before the Court. And if I do not move to quash the array, I will proceed to take up the Castner Hanway."

MR. STEVENS. "We do this to show that we do not wish to postpone any remark we might have to make till to-morrow."

JUDGE GRIER. "The prisoners have not been arraigned, and we do not know who are the counsel for the defendants. You can make your motion when the prisoners are arraigned."

Adjourned till to-morrow, at 10 A. M.

SAMUEL B. DALRYMPLE and ARTHUR CANNON, were sworn as Reporters, as follows:

"That you will correctly and impartially note and record the evidence, arguments, opinions, and generally all the proceedings which shall be had in the causes pending before this Court, on Indictments for Treason, according to the best of your ability."

Tuesday, November 25, 1851.

COURT WAS OPENED AT 10 O'CLOCK.

PRESENT, JUDGES GRIER AND KANE.

[MR. JAMES J. ROBBINS was sworn as follows: "That the copies of the evidence and other proceedings, which you shall cause to be printed from the notes of the Phonographic Reporters, for the use of the Court and Counsel in the trials now pending or about to commence, shall be by you carefully revised and made conformable to such notes."]

MR. B. GERHARD. "May it please the Court, there was a juror, called and marked as a defaulter yesterday, who really has never been served with a summons. He has been absent from the city long anterior to the period of the ordering of the venire. It is Mr. Hugh Campbell. He has not yet come home."

JUDGE GRIER. "He will have to come when he returns and finds his notice. He will not be in any default, not having received a notice. If he returns he will be required to attend—he is excused for the present. Call the jurors."

Jurors called—

JUDGE GRIER. "Mark such jurors as are yet in default and are not excused, in a fine of one hundred dollars each."

"I have a letter from Mr. Stokes, a juror, who has been absent but was expected home on Wednesday. He will be remitted until next Wednesday. After he returns and finds his notice, he will not be excused—he is excused now from his fine."

MR. VANZANT. "When I left home yesterday two of my children were very sick. I would ask to be excused for a few days, till I know more about them. I will attend in a few days."

JUDGE GRIER. "You are excused till Monday next. Is the Attorney for the United States prepared to proceed?

MR. ASHMEAD. "In one moment, may it please your honor. I want first to ascertain whether our witnesses are all in attendance—so that if some are absent, I may now in the beginning of this case move for attachments—since I am told some are in the room, and some in other parts of the building provided for them."

JUDGE GRIER. "The crier will call the witnesses."

Witnesses called.

MR. ASHMEAD. "I move now for the arraignment of the defendant Castner Hanway."

MR. J. M. READ. "Will your honors allow me to make a suggestion before this arraignment takes place, which we think it our duty to make, that whatever is done may not be drawn into a precedent; and yet I do not mean to move to quash the array. Your honors will see by the panel that there are 116 jurors returned—the order of the Court, I think was that there should not be less than 108—but it makes no difference whether it was 108 or 116, and it is not upon that ground at all that we object—we think it proper to lay before the Court our reasons for thinking this course unusual, and as we believe contrary to the law of this Circuit.

Your honors will recollect, and I merely call your attention to it—that we are now standing, in the State of Pennsylvania, upon the same law exactly as when the insurgents were tried in 1795, that is upon the Act of 1789 and 1800, and the usage that may have existed in the District under it. It is the effect of the Act of 1819, which has taken the State of Pennsylvania out of the general rules in regard to jurors, and turned us back upon what was the law of Pennsylvania in 1789, and which is now the law of the present Circuit Court sitting for the Eastern District of Pennsylvania. The State law that was in force in 1789 and in 1800, is the Statute of 1785, which was brought before the Court by Mr. Lewis, in the case of the United States insurgents, in 2 Dallas. The point there stated was that the jurors summoned were one hundred and eight, the answer to it was that there were four different counties then engaged and in a state of insurrection—as I suppose, though I cannot gather exactly from the face of the report itself—and I believe the indictments have not been published. I suppose there were indictments in each distinct county, and that the Marshal using his own discretion perhaps—summoned sixty jurors in the first place for a general panel, and twelve out of each county, making one hundred and eight, but that no panel consisted of more than seventy-two—that is, that no venire to try any single individual case consisted in number of more than seventy-two. It was not one hundred and eight that the Court sanctioned—but all that they sanctioned was seventy-two. I beg to turn now to the Act of 1785—and we shall have a little additional authority by showing the construction which one of the highest judicial officers of the United States placed upon a similar Act of Assembly in another State. We should not have troubled the Court with this, further than stating the objection, but as there is an intervening authority with which I shall trouble the Court, we thought it proper to state it in this way; we think this should not be made a precedent in future. The Act of 17 March, 1785, in 2 Dallas's State Laws, 262, after giving the oath of the sheriff, which is a very peculiar though a very proper one as to the summoning of jurors, "that he should not summon as a juror, any man who in his judgment, will be influenced in determining any matters which shall come before him, as a juror, by hatred, malice, or ill will, fear, favor, or affection, or by any partiality whatever."

The law, therefore, of the State of Pennsylvania was that no order of Court could make a larger jury than eighty, and the question submitted at that time in the case of the Insurgents was, whether that was binding upon the Courts of the United States. That, may it please your honors, arose under the Judicial Act of 1789, which then, only was in force—the Act of 1800 had not been passed, and which though it is now passed does not at all alter the relations existing in the State of Pennsylvania. The construction contended for by Mr. Bradford, then was, that whether that law was in force or not, as to the number—that in that identical case they had not exceeded the number—because they had not over eighty. The Marshal had exercised his own discretion, and the question was, whether he had gone beyond what the Court thought it proper to exercise. Judge Patterson in deciding this question, did as far as language could go, decide a general question, and that general question was that the Act of 1789 did not apply according to his idea of it, to the numbers of the jury, but simply to the designation and qualifications and other matters not involved in the question of numbers. The effect of that doctrine is to throw us back upon some other mode of proceeding unknown to the law of Pennsylvania—it is to throw us back upon the Common Law as practised in England, and to take that in preference to the law of Pennsylvania. The effect of the Common Law practice is one that I suppose your honors never would like to enforce in capital cases in Pennsylvania—that is to do as they did on Horn Tooke's trial—to have a jury of two hundred and twenty-eight—or as in one of the trials in Ireland—where they had eight hundred jurors for the purpose of allowing a defendant the privilege of challenging twenty-five or thirty. The effect of throwing aside the State Law, may it please your honors, is to throw you back upon the Common Law, where it is entirely in the discretion of the Court what number they will summon and bring into Court. The effect of that decision was to place the Circuit Court of Pennsylvania in the condition of a Court of King's Bench or Commission of Oyer and Terminer in England, and enable them to abuse their power and do what a Court like the one which I now have the honor to address, certainly would not do—enable them to summon fifteen hundred men, out of which the challenge of thirty-five would be useless.

I beg leave to say another thing on this subject before referring to a distinct authority. As has been contended, and as will be contended here, and as it is but fair and right for me to say was adjudged by Judge Baldwin, in the United States against Wilson and Porter, and by the Supreme Court of Pennsylvania, the Attorney-General, or his representative, representing the United States, has a right, not to challenge peremptorily, (that is taken away by the Statutes of Edward I.,) but he can challenge for cause, and he need not show his cause till the panel is exhausted. But, sup-

pose that to be the law in this case, and the precedent in Baldwin's Reports to be followed, if your honors had chosen, or if the marshal had chosen and your honors had confirmed it, to summon three hundred jurors here from the different parts of this district, and had added twelve, making three hundred and twelve, our challenge of thirty-five would be as useless as if it did not exist. The effect of it would be that the Attorney-General could go on and challenge each one, without showing his cause till the panel was exhausted, and the jury would be a jury of his own selection; and I call on your honors, if we submit in this case, not to have this drawn into a precedent, but that it may stand as a case passing not *sub silentio*, but where the advantage was not taken by the parties interested in taking it. Upon that subject I beg leave also to read from a work on the State Trials in Ireland, merely a passage or two as illustrative of what I would say, though probably not in the same language. (Reads.)

I merely cite this to show that according to the English rule if adopted here, and if adopted here I see no limit to it, the court might order so large a number as in itself virtually to destroy the prisoner's privilege of challenging

Having thus explained our reasons, and knowing that in this case your honors have done everything with the intention of securing a fair and impartial trial for the defendants, I beg leave to refer your honors to Burr's trial, in Virginia. The question there directly made was, as to the Grand Jury; I do not advert to the number of the Petit Jury, which as I understand, I did not look at that particular part, was passed without argument. The order was for forty-eight, of which I think twelve were to come out of the county of Wood, where the overt act was laid.

Your honors will recollect that in this trial Col. Burr appearing there under certain charges, was there at the time the Grand Jury was summoned into Court, and that he challenged the array. On page 31 of the first volume, on the 22d of May, 1807, Mr. Burr addressed the Court to the following effect.

"Before any further proceeding with regard to swearing the jury, I beg leave to remark some irregularity that has taken place in summoning part of the panel. This is the proper time to make the exception. I understand that the marshal acts not under an act of Congress, but a law of the State of Virginia, by which he is required to summon twenty-four freeholders of the State, to compose the Grand Jury. When he has summoned that number, his function is completed. He cannot on any account, summon a twenty-fifth. If, therefore, it can be made to appear, that the marshal has struck off any part of the original panel, and substituted other persons in their stead, the summons is illegal. Such is the law and the dictate of true policy; for in important cases, like the present, a different course would produce the most injurious consequences. I consider it proper to ask the marshal and his deputies, what persons they have summoned, and at what periods: whence it may be known, whether some have not been substituted in place of others struck off the panel. When we have settled this objection, I shall proceed to exceptions of a different nature." (1 *Burr's Trial*, pp. 31, 32.)

It turned out that the Marshal summoned twenty-four; two excused themselves and he substituted two names in their place, men of excellent character, one of whom I think was afterwards put in. Mr. Wickham says, "Before we go into this inquiry, we declare, that we mean no personal imputation upon the respectable gentleman who is the marshal. His intentions were certainly pure. It is an error of judgment alone, to which we object. But in the present case, where such important interests are at stake, and where such unjustifiable means have been used to prejudice the public mind against Colonel Burr, it is his right, to take every advantage the law gives him. We are prepared to show, that when a person is bound in a recognisance, he has a right, at this period of the business, to come before the Court with his exceptions to the grand jury; and if in any other case, why not in one of such deep importance as the present? In support of this position, Mr. Wickham cited, 2 Hawkin's Pleas of the Crown, p. 307, sect. 16, and 3 Bacon's Abridgement, p. 725. Whether we might afterwards file a plea in abatement for the error committed, is not now to be discussed. It is Colonel Burr's anxious desire, that this whole affair should terminate here, and that this grand jury may determine his case."—(1 *Burr's Trial*, pp. 33, 34.)

The Chief Justice, (on page 34,) called for the law of Virginia.

By turning to the Revised Code you will find that the question of number was the important one, according to our view of the case. At page †100 of the first volume of the Revised Code, Act of 29th Nov., 1792.

"The sheriff of each county, and the sergeants of the cities of Williamsburg, Richmond and borough of Norfolk, and other corporations within this commonwealth, shall, before every quarter session of the county or corporation courts, respectfully, summon twenty-four freeholders of his county or corporation, not being ordinary keepers, constables, surveyors of highways, or owners or occupiers of a mill, out of which number shall be empanelled a grand jury of sixteen at the least." By a subsequent law: "If a smaller number than 16 attend, the deficiency to be supplied from bystanders,"

Your honors will perceive that the question there was upon the Grand Jury—which is the same question as the Petit Jury—because the decision in 2d Dallas, is upon the question of numbers, to be sure with regard to the Petit Jury; but it makes no difference, but would affect the Grand Jury, and would throw us back upon the common law, but what I mean to say, is, that the Chief Justice of the United States, sitting in the District of Virginia, in his opinion, took that to be the law of the case. The Chief Justice inquired, whether the question had ever come before the State Courts, and being answered in the negative, adds:

As this question has never been decided before the State Courts, we must refer to the words of the Act of Assembly. There can be no doubt

that this is the time when the accused has a right to take exceptions to the jury; and the only doubt can be, is this a proper exception? The marshal is authorized by law, to summon twenty-four jurymen; but he is not to summon a twenty-fifth. Of course, the twenty-fifth is not legally summoned, unless he has the power to discharge a person already summoned. He has no such power, unless the jury be composed of bystanders. The twenty-four first summoned, must compose the jury, sixteen of whom constitute a quorum. It follows, therefore, that no one can be on the grand jury, unless he be one of the twenty-four first summoned, or one who has been selected from the bystanders by the direction of the Court. When the panel has been once completed by the marshal, its deficiencies can be supplied only from the bystanders.

The Chief Justice further observed, that he was not well acquainted with the practice in the State Courts; but he believed the practice of sheriffs to be, to excuse a man summoned on the jury, if they are satisfied that his excuse is reasonable. So it may have been with the officer of this Court, who acted, he had no doubt, with the most scrupulous regard to what he believed to be the law. That the Court, however, thought the marshal had no such dispensing power. One very obvious reason against the marshal's possessing this power of substitution, is, that if a person summoned, should come into Court, and prove that he had been actually summoned, he certainly would be on the grand jury, if one of the twenty-four first summoned. The general principle is, that when a person is put on the panel, he stands upon it, and cannot be displaced by the marshal. There is an evident distinction between actually summoning a grand juryman, and merely talking to a person about summoning him. The Court is therefore of opinion, that a person substituted in the place of one actually summoned, cannot be considered as being on the panel.]—(1 *Burr's Trial*, p. 37.)

May it please your honors, I may be all wrong about it, but this appears to me to be a direct authority, as far as it can be, to show that the ruling of Judge Patterson, on the subject of numbers, which was not essential in the case of the United States and the insurgents, was not the ruling adopted by the Chief Justice in Virginia. Our objection, if we had chosen to move to quash the array, would have been, that the order of the Court to summon one hundred and eight jurors, was not according to the law of Pennsylvania, and that the law of Pennsylvania, was, by the Act of Congress, made the law of this Court.

It is suggested to me by my colleague, that our understanding of the ruling of Judge Patterson, is, finally, that the officer having complied with the law of the State substantially, there was not a non-compliance as here, that the decision is not necessarily to be carried beyond the point actually decided. We have thought proper upon full reflection and consultation, for it has not been without looking at the subject attentively, to submit this to the Court, and to say that it is not our wish to take any advantage in this particular case.

Mr. Ashmead.—No motion has been submitted to the Court, and so far as this discussion has been presented, it seems to me irregular. The motion made on the part of the Government was that the defendant should be arraigned, and it should have gone on without reference to the question whether the jury was regularly returned or whether the Marshal had exceeded his authority, or disobeyed entirely the commands of the Court.

If this motion is made with any impression on the other side that we have any particular partiality for this jury, I wish to say that if they desire to quash the array, we will cordially agree to it. The venire, it is true, does not exactly conform to the order of Court. I suggested to the Court that the venire should issue for 108 jurors, twelve of them to be from Lancaster County. The venire issued by the Court instructed the Marshal to summon *not less* than 108, and he has returned 116 jurors, and as far as he is concerned, what he did is in strict conformity with the directions of the venire. He might have increased the number by making it ten or twenty more, according to his own discretion. So as to the number returned from the County of Lancaster,—the venire directed him to summon not less than twelve, and he has summoned sixteen. Allusion has been made to these questions; and as the counsel on the other side has been heard upon them, I desire to make a few remarks to show that in respect to all the matters to which reference has been made, the law is perfectly clear, and there can be no sort of difficulty concerning it. It is said, this is a bad precedent, and the case of Burr is referred to, where there were but one or two defendants, a person named Smith, and Mr. Blannerhasset; and in that case there were 48 jurors returned. But there is a marked difference between a case where these are but three defendants, and where there are some 40 prisoners to be tried. There is surely a propriety under such circumstances, in returning a much larger panel of jurors.

The mode of selecting jurors has been adverted to, and the case in 2d Dallas has been referred to, to show that the number returned is too large. It seems to me clear that it is in the power of the Court to order any number of jurors they think proper, and there is nothing in the law of the State of Pennsylvania limiting the number, which can apply to the law of the United States. I shall show first the section of the Act of Congress in regard to returning jurors.

It is the Act of Sep. 24, 1789, the 29th section of which provides as follows:

"In cases punishable with death, the trial shall be had in the county where the offence is committed, or where that cannot be done, without great inconvenience, twelve petit jurors at least shall be summoned from thence. And jurors in all cases to serve in the Courts of the United States shall be designated by lot, or otherwise, in each state respectively, according to the mode of forming juries therein now practised, so far as the laws of the same shall render such designation practicable by the Courts or Marshals of the United States; and

the jurors shall have the same qualifications as are requisite for jurors by the laws of the State of which they are citizens, to serve in the highest Courts of law of such State, and shall be returned as there shall be occasion for them, from such parts of the District, from time to time, as the Court shall direct, so as shall be most favorable to an impartial trial, and so as not to incur an unnecessary expense, or unduly to burthen the citizens of any part of the District with such services."

The Court will perceive that its provisions have no reference to the number of jurors to be returned, but simply to their qualifications and mode of selection. In these respects it should be similar to the proceedings in the State Courts, but in no other. It leaves the number as it stood at common law, to be designated by the Court in the venire.

JUDGE GRIER.—Was not that decision made in the case of the Western Insurgents? It is reported in full in Wharton's State Trials.

MR. ASHMEAD. As the objection has been made and it has been stated that this is not to be drawn into a precedent, I do not choose upon the part of the government to go on to trial with an objection such as this, made as a preliminary point. I mean to show that the government intends to proceed according to law, and I wish the other side to consent to nothing as matter of grace or favor. If this array in their judgment ought to be quashed, we are willing to unite with them, and agree that it shall be done. The act of Congress declares that the jury shall be drawn in the same way and possess the same qualifications as in the State Courts, but it does not limit the number, nor are they to be brought at stated periods, but the court can direct these jurors to come from time to time as it has occasion for them. Now what is the interpretation of this law? Judge Patterson says in the case of the U. S. *vs.* The Insurgents, (2 Dall. 338.)

"That the objections that have been suggested on this occasion, are principally founded on the 29th section of the judicial act of Congress, which refers the Federal Courts to the State Laws, for certain regulations respecting juries. But the words of this reference are clearly restricted to the mode of designating the jury, by lot, or otherwise; and to the qualifications which are requisite for jurors; according to the laws and practice of the respective States. Since, therefore, the act of Congress does not itself fix the number of jurors; nor expressly adopt any State rule for the purpose, it is a necessary consequence that the subject must depend on the common law; and, by the common law, the Court may direct any number of jurors to be summoned, on a consideration of all the circumstances under which the *venire* is issued."

MR. STEVENS.—Will the gentleman just read the next clause of that, it will save me the trouble.

MR. ASHMEAD reads it, as follows—

"There are instances, indeed, where five juries have been summoned upon a trial for High Treason, in order that, after the allowance of the legal challenges, a competent number might still be ensured. In the present instance, the precept requires the Marshal to return at least 48 jurors; and he has not, in my opinion, been guilty of any excess, in the exercise of that discretion, for returning a greater number, with which he is legally invested."

I do not see that what I have been asked to read interferes with my view at all. In that case there was a precept which directed the marshal to return forty-eight jurors, instead of which he returned 108. It only gives additional force to my view of the law.

One other point has been made to which I will allude. The right of the government not to challenge peremptorily in the first instance, but to set aside every juror till the panel is exhausted. That right does not depend simply on Judge Baldwin's opinion, in the case of Wilson and Porter, but it is settled by the Supreme Court of the United States, in U. S. v. Marchant, (12 Wheaton, 480,) and I will read a portion of the opinion of Judge Story, which will make that plain.

"Until the statute of 33 Edw. I., the crown might challenge peremptorily any juror, without assigning any cause; but that statute took away that right, and narrowed the challenges of the crown to those for cause shown. But the practice since this statute has uniformly been, and it is clearly settled, not to compel the crown to show cause at the time of objection taken, but to put aside the juror until the whole panel is gone through. Hawkins, on this point says, (Pl. Cr. b. 2. ch. 43. s. 2. s. 3.) 'if the king challenge a juror before the panel is perused, it is agreed that he need not show any cause of his challenge, till the whole panel be gone through, and it appears there will not be a full jury, without the person so challenged. And if the defendant, in order to oblige the king to show cause, presently challenge, *touts paravaile;* yet it hath been adjudged, that the defendant shall be first put to show all his causes of challenge before the king need to show any.' And the learned author is fully borne out by the authorities which he cites, and the same rule has been recognized down to the present times."

The law, therefore, is clearly settled by that decision, it thus is the right of the government to set aside all the jurors until the panel is exhausted.

The object of challenging is not to enable the prisoner to select his own jury, but is simply to give to him an opportunity to challenge any to whom he may have objection.

I have suggested these matters now, because these questions would have come up hereafter, and probably to have had this discussion now, may save time in the further progress of the case.

JUDGE GRIER—There is no motion before the Court, and I don't see that we are called upon to decide anything about it. Let the prisoner be arraigned.

MR. COOPER—I would ask the gentlemen who are counsel for the prisoner, whether they desire that the array in this case should be quashed. If they do, I am instructed to say on the part of the counsel for the government that there will be no objection to quashing the array.

MR. STEVENS.—If your honors please, if the prosecution will add to that agreement, that the prisoner shall be admitted to bail to appear at the next session of this Court, ample bail, and that, according to what we believe to be the Act of Congress, the trial shall be ordered in the county of Lancaster, it is our desire; otherwise not.

MR. ASHMEAD.—We cannot violate the law which provides that those who are charged with murder and treason are not admissable to bail.

MR. STEVENS.—I don't think that universally follows; where the guilt is apparent, and the presumption violent, they cannot, but in all other cases they can, if my recollection of the Constitution serves me right.

MR. ASHMEAD.—Where the Grand Jury have found a true bill, I should think the presumption was violent, and that the Court could not admit to bail.

JUDGE GRIER.—We have a great deal of business before us, let us not take up the time in useless discussion.

Let the prisoner be arraigned.

UNITED STATES *v.* HANWAY.

Castner Hanway was arraigned in the following form:

By the Grand Inquest of the United States of America, inquiring for the Eastern District of Pennsylvania, who on their oaths and affirmations respectively do present, that you Castner Hanway, yeoman, of the District aforesaid, owing allegiance to the United States of America, wickedly devising and intending the peace and tranquillity of the said United States to disturb, and to prevent the execution of the laws thereof within the same, to wit, a law of the said United States, entitled "An act respecting fugitives from justice and persons escaping from the service of their masters," approved February twelfth, one thousand seven hundred and ninety-three, and also a law of the said United States, entitled "An act to amend, and supplementary to, the act entitled 'An act respecting fugitives from justice and persons escaping from the service of their masters,' approved February twelfth, one thousand seven hundred and ninety-three," which latter supplementary act was approved September eighteenth, one thousand eight hundred and fifty, on the eleventh day of September, in the year of our Lord one thousand eight hundred and fifty-one, in the County of Lancaster, in the State of Pennsylvania and District aforesaid, and within the jurisdiction of this Court, wickedly and traitorously did intend to levy war against the said United States within the same.

And to fulfil and bring to effect the said traitorous intention of you, the said Castner Hanway, you, the said Castner Hanway, afterwards, to wit, on the day and year aforesaid, in the said State, District, and County aforesaid, and within the jurisdiction of this Court, with a great multitude of persons, whose names to this Inquest are as yet unknown, to a great number, to wit, to the number of one hundred persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords, and other warlike weapons, as well offensive as defensive, being then and there unlawfully and traitorously assembled, did traitorously assemble and combine against the said United States, and then and there, with force and arms, wickedly and traitorously, and with the wicked and traitorous intention to oppose and prevent, by means of intimidation and violence, the execution of the said laws of the United States, within the same, did array and dispose themselves in a warlike and hostile manner against the said United States, and then and there, with force and arms, in pursuance of such their traitorous intention, you, the said Castner Hanaway, with the said persons so as aforesaid, wickedly and traitorously did levy war against the United States.

And further to fulfil and bring to effect the said traitorous intention of you the said Castner Hanway, and in pursuance and in execution of the said wicked and traitorous combination to oppose, resist and prevent the said laws of the United States from being carried into execution, you, the said Castner Hanaway, afterwards, to wit, on the day and year first aforesaid, in the State, District and County aforesaid, and within the jurisdiction aforesaid, with the said persons whose names to this Inquest are as yet unknown, did wickedly and traitorously assemble against the said United States, with the avowed intention by force of arms and intimidation, to prevent the execution of the said laws of the said United States, within the same; and in pursuance and execution of such their wicked and traitorous combination, you the said Castner Hanaway, then and there with force and arms, with the said persons to a great number, to wit, the number of one hundred persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords, and other warlike weapons, as well offensive as defensive, being then and there unlawfully and traitorously assembled, did wickedly, knowingly and traitorously resist and oppose one Henry H. Kline, an officer duly appointed by Edward D. Ingraham, Esquire, a Commissioner duly appointed by the Circuit Court of the United States for the said District, in the execution of the duty of the office of the said Kline, he, the said Kline, being appointed by the said Edward D. Ingraham, Esquire, by writing under his hand to execute warrants and other process issued by him the said Ingraham, in the performance of his duties as Commissioner under the said laws of the United States; and then and there, with force and arms, with the said great multitude of persons, so as aforesaid unlawfully and traitorously assembled, and armed and arrayed in manner as aforesaid, you, the said Castner Hanway, wickedly and traitorously did oppose and resist, and prevent the said Kline from executing the lawful process to him directed and delivered by the said Commissioner against sundry persons, then residents of said County, who had been legally charged before the said Commissioner as being persons held to service or labor in the State of Maryland, and owing such service or labor to a certain Edward Gorsuch, under the laws of the said State of Maryland, had escaped there-

from into the said Eastern District of Pennsylvania; which process, duly issued by the said Commissioner, the said Kline then and there had in his possession, and was then and there proceeding to execute as by law he was bound to do; and so the Grand Inquest, upon their respective oaths and affirmations aforesaid, do say, that you the said Castner Hanway, in manner aforesaid as much as in you lay, wickedly and traitorously did prevent, by means of force and intimidation, the execution of the said laws of the United States, in the said State and District.

And further to fulfil and bring to effect the said traitorous intention of you, the said Castner Hanway, and in further pursuance and in execution of the said wicked and traitorous combination to oppose, resist, and prevent the execution of the said laws of the said United States, in the State and District aforesaid you, the said Castner Hanway afterwards, to wit, on the day and year first aforesaid, in the State, county, and district aforesaid, and within the jurisdiction of this court, with the said persons whose names to the grand Inquest aforesaid are as yet unknown, did wickedly and traitorously assemble against the said United States, with the avowed intention, by means of force and intimidation, to prevent the execution of the said laws of the United States, in the State and district aforesaid, and in pursuance and execution of such, their wicked and traitorous combination and intention, then and there in the State, district and county aforesaid, and within the jurisdiction of this court, with force and arms, with a great multitude of persons, to wit: the number of of one hundred persons and upward, armed and arrayed in a warlike manner, that is to say, with guns, swords, and other warlike weapons, as well offensive as defensive, being then and there unlawfully and traitorously assembled, you, the said Castner Hanway, did, knowingly and unlawfully, assault the said Henry H. Kline, he, the said Kline, being an officer appointed by writing under the hand of the said Edward D. Ingraham, Esquire, a commissioner under said law, to execute warrants and other process, issued by the said commissioner in the performance of his duties as such; and you, the said Castner Hanway, did then and there, traitorously with force and arms, against the will of the said Kline, liberate and take out of his custody, persons by him before that time arrested, and in his lawful custody then and there being, by virtue of lawful process against them issued by the said commissioner, they being legally charged with being persons held to service or labor in the State of Maryland, and owing such service or labor to a certain Edward Gorsuch, under the laws of the said State of Maryland, who had escaped therefrom into the said district; and so the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do say that you, the said Castner Hanway, as much as in you lay, did then and there, and in pursuance and in execution of the said wicked and traitorous combination and intention, wickedly and traitorously, by means of force and intimidation, prevent the execution of the said laws of the United States, in the said State and district.

And further to fulfil and bring to effect the said traitorous intention of you, the said Castner Hanway, and in pursuance and in execution of the said wicked and traitorous combination to oppose, resist and prevent the said laws of the United States from being carried into execution, you, the said Castner Hanway, afterwards, to wit, on the day and year first aforesaid, and on divers other days, both before and afterwards in the State and district aforesaid, and within the jurisdiction of this court, with the said persons to this Inquest as yet unknown, maliciously and traitorously did meet, conspire, consult, and agree among themselves, further to oppose, resist, and prevent, by means of force and intimidation, the execution of the said laws herein before specified.

And further to fulfil, perfect, and bring to effect, the said traitorous intention of you, the said Castner Hanway, and in pursuance and execution of the said wicked and traitorous combination to oppose and resist the said laws of the United States from being carried into execution, in the State and district aforesaid, you, the said Castner Hanway, together with the other persons whose names are to this Inquest as yet unknown, on the day and year first aforesaid, and on divers other days and times, as well before and after, at the District aforesaid within the jurisdiction of the said court, with force and arms, maliciously and traitorously did prepare and compose, and did then and there maliciously and traitorously cause and procure to be prepared and composed, divers books, pamphlets, letters, declarations, resolutions, addresses, papers and writings, and did then and there maliciously and traitorously publish and disperse, and cause to be published and dispersed divers other books, pamphlets, letters, declarations, resolutions, addresses, papers and writings, the said books, pamphlets, letters, declarations, resolutions; addresses, papers, and writings, so respectively prepared, composed, published and dispersed, as last aforesaid, containing therein, amongst other things, incitement, encouragement, and exhortations, to move, induce, and persuade persons held to service in any of the United States by the laws thereof, who had escaped into the said district, as well as other persons, citizens of said district, to resist, oppose, and prevent, by violence and intimidation, the execution of the said laws, and also containing therein instructions and directions how and upon what occasion, the traitorous purposes last aforesaid, should and might be carried into effect contrary to the form of the act of Congress in such cases made and provided, and against the peace, dignity of the United States.

CLERK.—How say you Castner Hanway, are you guilty or not guilty?

PRISONER.—Not guilty.

CLERK.—How will you be tried?

PRISONER.—By God and my Country.

CLERK.—God send you a good deliverance.

On the arraignment of the defendant, the following counsel appeared:

For the United States.

JOHN W. ASHMEAD.
GEORGE L. ASHMEAD.
JAMES R. LUDLOW.

For the State of Maryland.

ROBERT J. BRENT.
JAMES COOPER.
R. M. LEE.

For the Defendant, Castner Hanway.

JOHN M. READ.
J. J. LEWIS, of Westchester.
THEODORE CUYLER.
THADDEUS STEVENS, of Lancaster
W. ARTHUR JACKSON.

CLERK.—Castner Hanway! These good men, whom you shall now hear called, are those who shall pass between you and the United States, upon your life and death. If you will challenge them, or any of them, you must challenge them before they are sworn or affirmed, and you shall be heard.

Solomon Newman, called and answered.

CLERK.—Juror look upon the prisoner. Prisoner look upon the juror. What say you, challenged or not challenged?

PRISONER.—Not challenged.

MR. LUDLOW.—On behalf of the Government we propose to submit a series of questions, and it may be as well for me to address the Court upon this subject now as at any other time. In accordance with what has been already intimated, we claim the right of setting aside any juror until the panel is exhausted. If he is not set aside I propose to ask him each and all of these questions, to wit:

1 Have you any conscientious scruples, upon the subject of capital punishment, so that you would not, because you conscientiously could not, render a verdict of treason, death being the punishment, though the evidence required such a verdict?

2 Have you formed or expressed any opinion, relative to the matter now before the Court?

3 Are you sensible of any prejudice or bias thereon?

4 Have you formed, or expressed any opinion, as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

5 Have you heard anything of this case, which has induced you to make up your mind as to whether the offence charged in the indictment, constitutes treason or not?

6 Have you formed an opinion that the law of the United States, known as the Fugitive Slave Law of 1850, is unconstitutional; so that you cannot convict a person indicted under it; for that reason, if the facts alleged in the indictment are proved, and the Court hold the statute to be constitutional?

"We propose now, to interrogate the jurors as to each, and all of these questions."

MR. READ. "May it please your honors, we have never seen these questions, nor heard them till this moment, and we are called upon I suppose, of course, as the counsel for the prisoner, to say what we think about them. It appears to me, that this is a sort of nest of questions, all or most of which might have been compressed in one or two, that is, either as the one used in regard to the Convent rioters, or on the subject of the Kensington riots; general in their character, and of course including all the circumstances of the case. The first one we do not intend to make any difficulty about, but here is a series of questions, all of which may be comprised in one general one, but are used for the purpose of coming out finally, to another question, which is not put in the form I think it ought to be, and to which I have a very great objection."

We will take them up in order.

First. Have you any conscientious scruples upon the subject of capital punishment, so that you would not, because you conscientiously could not, render a verdict of *treason*, death being the punishment, though the evidence required such a verdict?

"I believe if that is put in the form of Com. *v.* Lesher, or like it, we dont object to it."

MR. ASHMEAD. "It is the precise form."

MR. READ—Second. Have you formed or expressed any opinion relative to the matter now before the Court? That is rather to the favour—it is not the principal challenge. I do not think there is any precedent for that question put in that shape. If there be an authority it ought to be stated, because this is a question of principal challenge that if answered in the negative or affirmative the Court is to reject as I understand it—it is too general, and is not such a question as ought to be put in that shape—and unless there is some binding precedent for it, it is not such a one as we think ought to be put in the first instance.

Fourth. There are no other persons charged in the indictment. It is therefore not such a question as ought to be put. It ought not certainly to be put in that shape. Nor ought it to be put as a repetition of the second question, which it is to a certain extent. (Reads the question.) Perhaps I read the question wrong—but it comes to the same thing. It is a repetition of the same thing. I would refer to the questions, very well collected by Mr. Wharton, in his work on Criminal Law, which I believe contains nearly all the forms.

"Have you formed and expressed an opinion about the guilt of Col. Burr?"—*Marshall, C. J., Burr's Trial.*

"Have you formed and delivered an opinion on the subject matter of this indictment?"—*Chase J., in U. S.* v. *Callender.*

"Have you heard any thing of this case, so as to make up your mind?" "Do you feel any bias or prejudice, for or against the prisoner at the bar?"—*Parker J., Selfridge's Trial.*

"Have you formed and expressed an opinion of the guilt or innocence of the prisoners?"—*Marshall, C. J., in U. S.* v. *Hare.*

"Have you formed or expressed an opinion as to the general guilt or innocence of all concerned in the offence?" (viz. the burning of the convent in Charlestown, Mass.)—*Supreme Court of Mass., on trial of the Charlestown rioters.*

"Have you made up your mind as to which of the two parties was in the wrong, in the Kensington riots?"—*Rogers, J., Supreme Court of Pennsylvania, April* 29, 1845, *in Com.* v. *Sherry, one of the Kensington rioters.*

1. "Have you, at any time, formed or expressed an opinion, or even entertained an impression which may influence your conduct as a juror?"

2. "Have you any bias or prejudice on your mind, for or against the prisoner?"—*Ogden, J., on a homicide trial.* (Wharton's Amer. Crim. Law, p. 611.)

Next. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not? I object to this question. I think it is interfering entirely too much with the province of the jury after the cause

is heard. Suppose a juror comes into the jury box and thinks this is treason—have we not a right to reject him? As Chief Justice Marshall has said, if you look at the question in both ways —that which ought to exclude him if he has a bias for the prisoner, ought also, if he has a bias the other way. Suppose any body here has made up his mind that this is a subject of treason, is it a reason why he should be excluded? The consequence may be, if they are to put this question in the first instance, that jurors never can be got under these circumstances. That is a question of law which is to be decided in the course of this case, and which we are not to anticipate until it is argued and finally decided by the Court and jury. We decidedly object to this question.

Then comes another one, "Have you formed an opinion that the law of the United States known as the Fugitive Slave Law of 1850, is unconstitutional — so that you cannot convict a person indicted under it for that reason, if the facts alleged in the indictment are proved, and the Court hold the statute to be constitutional? May it please your Honors, this is a point about which I had desired that there should be no preliminary matter before this Court and Jury, to raise unnecessarily a question, we are not here to dispute—I speak for myself and I believe for my colleagues—we are not here to dispute the constitutionality of that law—and we do not intend to argue it. This question is not put in the form in which it has been put in the Circuit Court in Boston, which was intended to decide so far as the Judge and Jury were concerned, contrary to the established law of Pennsylvania, and I hoped that in a case like the present where a question of life and death is involved, we should not have had a question of this kind obtruded in this particular shape. I may state frankly what my objection is—I understand it to have been laid down in the Circuit Court of Massachusetts, that the jury are not the judges of the law and the fact, and that the question was there formed in such a way as, that a juror after having taken the oath, was bound by it as if it had been put in the oath of a juryman that he was not to be the judge of the law at all.

I wanted to avoid this question. And I had hoped, that when we frankly say that we don't intend to contend for the constitutionality or unconstitutionality of this law, that then there would not be a question raised to involve this point beforehand, and bind the conscience of the juryman before he comes into the jury box. If they would put a general question as to the constitutionality or unconstitutionality of the law, I dont know that we would object to it in that shape; but it ought not to be in such a shape, as to involve the difference existing between the opinion of the Court and juror.

The questions with regard to masonic institutions and religious persuasions, have always been ruled out, though they certainly have more or less influence; but every thing of that kind, interfering with the private rights of individuals, have never been put by Courts, that I know of. I have never known, except in the instance alluded to, of such a question being put to a juror. There was a distinction there, which in Massachusetts, according to the ruling of the Court there, may be law, but which in Pennsylvania, undoubtedly would not be; according to our understanding. Upon that part of the subject, I dont wish to trench, but we object to the form of that question; we object also, to the fifth question, and we think they ought to be consolidated in such a way, as to make them as few as possible."

Mr. Ludlow. "We are not disposed, may it please your honors, at this stage of this cause, to allow a matter of as much importance as this is, to pass without some effort upon our part, to preserve the justice of the country pure and untainted. If we are to summon jurors to attend at this Court, and they are allowed to pass into the jury box without most extraordinary caution on our part, as well as upon the side of our friends representing the prisoner at the bar; if we do not use every means to preserve pure the source, if I may so call it, of justice; where are we, Sir? In the matter of this questioning of jurors, what is the principle upon which it all moves, and has moved, from the foundation of the Court to the present moment? It is this: as civilization and intelligence advances, and as men are presumed to know what is taking placé about them, and to have formed and expressed opinions upon all subjects, and especially in a country such as ours; we are to take it for granted, that unless we press home upon jurors, certain questions essential to the proper trial of a cause, that we cannot present to the country, to the Court, and to the parties, such a jury as it is proper for us to present upon a trial of such importance as this. The principle adopted is, that in proportion as we advance in civilization, and divers questions arise, the Courts, exercising a sound discretion, allow such questions to be put to the jurors, as will effectually guard the jury box.

The other side make no objection to the first question, and that is disposed of. What is the object of the series succeeding the first? Simply to come to some definite opinion as to the views of the jurors. What would be the result if in answer to the first of them, the juror should say, I have formed an opinion? Is he a proper man to sit in that Jury box. Third, "Are you sensible of any prejudice or bias thereon?" Ought he to take his seat in the jury box, if he is sensible of a bias? These questions ought to be put—it is absolutely necessary that they should be put—for this Court could not move with justice a step unless they are."

Judge Grier. Is not that question too vague—a man could hardly tell how to answer it—it would put it in the power of any one to challenge himself.

Mr. Ludlow. The question was allowed to be put in the same way in the Circuit Court in Boston.

Mr. Cooper. We have no objections on the part of the prosecution, to modify that question, and make it more directly to the point — but

that is the form in which it was put in the case of Shadrach.

MR. STEVENS. I would suggest whether it is not the duty of the prosecution—first to challenge if they wish to—and whether after they call upon the defendant to look upon the prisoner, they have not precluded themselves.

MR. LUDLOW. I understand that the present course is the practice in this Court; and I had the honor to appear before this Court in a case, in which the very principle was allowed to be acted upon. The prisoner was first called upon to challenge the juror or not, and then the questions were put to him by the officers of the Government.

JUDGE GRIER. So far as the experience of either member of the Court goes, the practice has been as you are now proceeding. I don't know any other—I don't say it is right or wrong. I merely mention it as a matter of fact.

JUDGE KANE. It has been the uniform course in this Court.

MR. LEWIS. The principle is always that the plaintiff shall challenge first.

JUDGE GRIER. They have no challenge only for cause.

MR. ASHMEAD. We contend that we can set aside until the entire panel is exhausted. In the proceedings, the direction is, first—Juror, look upon the prisoner—prisoner, look upon the juror. Challenge or not challenge? Then the prisoner answers; and if the juror is not challenged, we have a right to submit these interrogatories, if the Court determine them to be proper—and then we may set him aside.

MR. READ. As to the mode of challenging, I supposed in England the defendant challenges first, but, then, as I understand it, the Crown don't put any such question as this—the American challenges for cause, and the juror stands by, and, if the panel is exhausted, then come up the questions. But, according to the method adopted in our State Courts, for the convenience of parties; and under the ruling in Com. *v.* Lesher, in 17 S. & R. certain questions are put, and it seems that it is proper that they should be put to the juror just as he comes up. I believe that is the case where there are a nest of questions of this kind—they are put to every juror as he comes up, and if he answers affirmatively, we challenge or not, and then the United States challenges, and there is a deviation from the common law form in the mode of doing it. It of course would be more convenient and proper that the United States should exercise it in the first instance.

JUDGE KANE. I believe the uniform practice of the Circuit Court, so long as I remember it, and certainly for the last five years, has been otherwise than as the gentleman who has last spoken would advise.

MR. ASHMEAD. Here it is settled, in the Circuit Court of the United States, Baldwin's Reports, in the case of the United States *v.* Wilson and Porter, the Court decided that the Attorney General had not a right to challenge, but to set aside the juror till the panel was gone through with.

JUDGE GRIER, (to Mr. Ludlow). This is an interruption to your remarks on the questions.

MR. LUDLOW. The next question in order is, 'Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?' What objection can there be to that question? In a case like this, where there are no accessories, the opinion of the juror as to the guilt or innocence of other persons alleged to have participated with him in the offence, may be of serious moment, and greatly interfere with his capacity as a juror. I submit that question, though it may, perhaps, be but adding a little to the others that have preceded it—but no injury can result to the prisoner from it—and if it is essential to the rights of the United States, it should be put.

Fifth question. Is this Court to bind themselves to the prevailing state of public opinion upon this subject? Opinions have been advanced openly, that there was no treason in this offence, and the United States Government has been ridiculed because that it should pretend to charge a man with treason who had committed an act which, according to the law of the United States, *was* treason. It has been boldly expressed everywhere, that this was not treason, by a certain set of men; and suppose the representative of that class of men should take his stand as a juror. Is he to pass into the jury box, having made up his mind that this is not treason. Is he to go in with such an opinion as that, which would make it a farce for us to come into Court and attempt to try the cases

JUDGE GRIER. Is not this included in the general question, as to whether he has not formed an opinion as to the guilt or innocence of the defendant?

MR. LUDLOW. The difference is this: a man may have expressed no opinion as to Hanway's case, and yet that man may have made up his mind that whatever took place in Lancaster was not treason. The last question is, "Have you formed an opinion that the Law of the U. S., known as the Fugitive Slave Law of 1850, is unconstitutional, so that you cannot convict a person indicted under it for that reason, if the facts alleged in the indictment are proved, and the Court holds the Statute to be constitutional." This question is a very important one, and it is of all others the most essential to the proper selection of the jury. It is the identical question determined by the Circuit Court to be put in Boston. A juror may say, "I do not say whether it is constitutional or not,"—he may have some vague idea as to it which would not interfere with his exercising his duties at the same time, and he may not have formed such an opinion of it, so that he could not convict a person indicted under it for that reason, if the facts alleged in the indictment are proved, and the Court held the Statute to be constitutional. It is important that the question as to how far a jury shall consider the law should be limited by prudence and judgment, and if I state that Judge Baldwin has

determined that the jury shall take the law in a measure as it comes from the Court—

MR. READ. Do you mean to state that as a principle of law?

MR. ASHMEAD. Yes, sir; and I shall maintain it.

JUDGE GRIER. If at any time it should appear that the defendant's counsel are appealing to the jury over the Court we will raise the question then.

MR. LUDLOW. Can any juror go into that box without stating what he believes in regard to the Fugitive Slave Law? You would annihilate the Constitution of the United States at once, and hazard everything in allowing that juror to go into the jury box and say—I believe the law to be an outrage upon humanity. It is essential to the rights of the United States that every juror who goes into that box should believe the law to be constitutional, and if the question is not put, any juror may take his seat and be guilty of the same traitorous intention in heart as is charged in the overt act upon the prisoners. I plant myself upon general principles—that the Court are bound as the world advances in civilzation, and as knowledge is diffused among the people; to be governed by the circumstances at the time, and that in view of these circumstances now—in view of the prevailing excitement on the subject, and in view of the fact that perhaps thousands have said the law is not binding and should not be carried into effect, it is essential to the proper trial and justice of this case that the last question, above are others, should be put and answered directly, firmly and without the slightest prevarication.

MR. ASHMEAD. Will your honor permit me to hand you the points as settled by Judge Curtis in Shadrach's case?

JUDGE KANE—I am requested by his Honor Judge Grier, to make a single remark which may explain the action of the Court on the question now before it. We consider it is due to the accused, and due also to the purposes of justice, that as far as possible every juror that is sworn to pass between the United States and the prisoner, shall be entirely without bias of any sort whatever. The offence of which the prisoner is charged, essentially consists of two elements, the act, and the intent of that act. And a juror who has formed an opinion, as to his participation in a certain act, or as to the intent which would be deducible from that act, and already passed in his mind upon a part of the general proposition, that is involved in a question of guilt or innocence. In that view of the subject, the Court has modified somewhat the questions which have been proposed by the counsel for the United States.

The first question proposed is not objected to, as to the conscientious scruples of a juror as to the subject of capital punishment. The second has been modified to read thus: Have you formed or expressed any opinion relative to the matter now to be tried? There is also a modification as regards the third question, which as amended reads thus: "Are you sensible of any such prejudice or bias therein as may affect your action as juror. The fourth remains without change. The fifth also remains without change. The sixth as amended reads thus:—"Have you formed or expressed an opinion that the law of the United States, known as the Fugitive Slave Law of 1850 is unconstitutional, so that you cannot for that reason convict a person for forcible resistance thereto if the facts alleged in the indictment are proved and the Court decide the statue to be constitutional.

[The questions as amended and allowed by the Court read thus.

1. Have you any conscientious scruples upon the subject of capital punishment, so that you would not, because you conscientiously could not render a verdict of guilty, death being the punishment though the evidence required such a verdict?

2. Have you formed or expressed any opinion relative to the matter now to be tried?

3. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

4. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons allegod to have participated with him in the offence charged against him in the indictment?

5. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

6. Have you formed an opinion that the law of the United States, known as the Fugitive Slave Law of 1850, is unconstitutional, so that you cannot for that reason, convict a person indicted for a forcible resistance thereto, if the facts alleged in the indictment are proved and the Court hold the statute to be constitutional?]

David George was called and answered.

CLERK. Juror look upon the prisoner. Prisoner look upon the Juror. How say you prisoner, challenged or not challenged?

PRISONER—Not challenged.

MR. LUDLOW—I will ask that this juror be set aside for the present.

Jonathan Wainwright was called and answered.

CLERK—Juror look upon the prisoner. Prisoner look upon the juror. How say you prisoner, challenged or not challenged?

PRISONER.—"Not challenged."

MR. LUDLOW.—"We ask that this Juror be set aside for the present."

Erskine Hazard was called and answered

CLERK.—"Juror look upon the prisoner. Prisoner look upon the Juror. How say you Prisoner? Challenged or not challenged?"

MR. CUYLER.—"Swear the Juror."

JUROR.—"I affirm."

JUDGE GRIER.—"Are you conscientiously scrupulous against taking an oath?"

JUROR.—"I am."

The Juror affirmed.

MR. READ.—"We will put some of the questions may it please your honors."

JUDGE GRIER.—"Let the defendant's counsel have a copy of the questions."

MR. LUDLOW.—"Yes sir, I will have a copy of them made."

MR. READ.—"We do not want to occupy the time of the Court or Jury in asking the whole of the questions, therefore shall only use some of them."

JUDGE GRIER.—"You can put any, or omit any, as you please."

MR. READ.—"Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment."

JUROR.—"I am not aware that I have."

MR. READ.—"The prisoner challenges the Juror."

JUDGE KANE.—"Peremptorily?"

MR. READ.—"We challenge peremptorily."

John Miller was called and answered.

CLERK.—"Juror look upon the Prisoner. Prisoner look upon the Juror. How say you Prisoner? Challenged or not challenged?"

MR. CUYLER.—"Swear the Juror if you please."

The Juror is sworn.

MR. CUYLER.—"Have you formed or expressed any opinion sir, as to the guilt or innocence of the prisoner."

JUROR.—"I have not."

MR. CUYLER.—"Have you formed or expressed any opinion as to the guilt or innocence of the other persons alleged to have participated with him in the offence charged against them, in the indictment."

JUROR.—"I have not."

The prisoner challenges the Juror.

Jacob Hammer was called.

CLERK.—He is excused for two weeks.

Ephraim Fenton called and answered.

CLERK.—Do you desire him to be sworn?

MR. READ.—No sir.

CLERK.—Juror look upon the Prisoner. Prisoner, look upon the Juror. How say you prisoner? Challenged or not challenged?

PRISONER.—Not challenged.

MR. LUDLOW.—We ask that this juror be set aside for the present.

Robert F. Walsh was called and answered.

MR. CUYLER.—Swear the juror

The juror was sworn on his voir dire.

MR. CUYLER.—Have you formed or expressed any opinion relative to the matter now to be tried.

JUROR.—I read the newspaper accounts at the time, and came to my own conclusion about them.

MR. CUYLER.—Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in this indictment.

JUROR.—I had come to my own conclusion about it at the time.

MR. STEVENS. We challenge for cause. He says he had come to a conclusion at the time, in answer to both the questions.

MR. COOPER. If the Court please, I doubt whether there has been developed by the examination of the juror sufficient to authorize a challenge for cause on the part of the prisoner. He states that from the newspaper accounts of the case he has come to his own conclusions, and he answers in reference to both the questions in the same way. Now, I think in the trial of Burr, it was decided that they must have formed and expressed an opinion in order to entitle the defendants to a challenge for cause. If every juror who has come to a conclusion in his own mind, upon statements made in the newspapers, is to be excluded, we shall be scarcely able to attain to the desired object, I trust, on both sides, of securing an impartial panel. Almost every intelligent man has read an account of this proceeding given by the newspapers, and has undoubtedly formed some conclusion in his own mind. The human mind is so constituted, that facts can scarcely be brought to bear upon it that it does not conclude either *pro* or *con* in regard to it. Now I understand that it is not enough that he should have read an account and come to a conclusion upon it in his own mind, but that he must have expressed that conclusion. And it seems to me, if your honour please, that there is a difference between the formation and expression of an opinion by a juror, if he has formed an opinion without having expressed it. He is not committed as far as language is concerned. He is not so far committed in one case as in the other, when he has expressed it. That pride and prejudice, which insensibly we all possess, is enlisted in requiring that the opinion expressed should be lived up to. I think if my memory serves me right, the same distinction was made in the trial of Aaron Burr, in which Judge Chase came to a similar conclusion under his presidency, in the matter. I have a memorandum, if your honours please, that will assist me somewhat in this matter."

JUDGE KANE. "Wait a moment."

MR. COOPER. "If the Court has decided, it is only in reference to a single fact, in reference to the opinion of Judge Chase in the trial of Calender. A Mr. Basset was called as a juror, and a question similar to that was put to him."

JUDGE KANE. "I think it was in Robert's case. I may be wrong.

MR. COOPER. "It was in the case of Calender, tried for libel. Mr. Basset was called, and a similar question proposed. The indictment did charge upon the defendant the publication of a malicious libel. Mr. Basset answered that he had made up his mind in relation to the facts, and that the book which was entitled "The Prospect before us," was a libel, but he did not know who was the author, which would have been a subject of easy proof. And though the decision was found fault with, and brought into the Senate, it was supported there by a majority of three or four to one. It was afterwards referred to in Burr's trial, by application of Chief Justice Marshall. I do think that this is as near as anything that can be found by way of a precedent.

MR. READ. We have only used the form of the question put by the United States. We take the question as deliberately drawn up by these gentlemen, and we repeat this question to the jurors. I do not see what more could be done.

They have formed it upon deliberation, and taken from Judge Baldwin, as in the case of the United States against Porter, which is the latest decision upon the subject. We very little care about it one way or the other.

JUDGE GRIER. The question is, whether the answer given by the juror to this question, or both of them, is sufficient to show that he is unfit for a juror, and whether it shows a bias or not. We are of opinion that as it stands it does not, and that it shows the necessity in permitting such a general question, to have others more specific; giving them, as has been truly said, the character of "a nest of questions," where the first may be said to contain all the others. We do not expunge them for that reason. If a question is very general, it may be answered in such a way as that the Court could not say whether it was sufficient to exclude a juror or not. For instance, in these times, when every thing is published, from one end of the world to the other, there is no great crime whatever that comes before the cognizance of the Court, that is not immediately abroad, and the history of it read by every man before the trial comes on. I suppose there is no one in all that number who could not with truth say, I read the papers at the time, and passed my own conclusions upon it. Would it not be true that he had formed his own conclusion that such conduct was unjustifiable and illegal. Is it not so in the case of murder, or any thing else, that we come to the conclusion, that persons who are guilty of it ought to be punished? That is a conclusion almost every mind would form. And one who had formed such a conclusion might have truly answered to the question, that he had formed an opinion. And yet, if such were the case, it would put an end to all jury trials. For we could not find men, unless we took those who were blind, or could not read perhaps. Or else we should have to go to some corner of the earth where persons did not see papers, or read the daily news. Before the Court can exclude this gentleman for cause, we shall consider it necessary to ask some further questions with regard to what he means by this. We wish to know if he has formed his conclusive opinion, that the transaction for which this defendant is upon trial, or his participation in it, was treasonable against the United States government. He has then formed an opinion which affects a most important matter in this case, which is, the intention of the defendant. If he has formed an opinion that this defendant is one of the persons who was guilty upon that occasion, or that he was not, that would be sufficient ground of challenge. But unless he explains it, we must arrive at the determination, that it is a reply that might be made by every juror, and we might not get a panel for two years. The juror will be required to answer some other questions by way of explanation.

MR. STEVENS. We have heard the opinion of the Court now, and we will ask some more questions.

JUDGE GRIER. Have you formed an opinion as to whether the persons engaged in this transaction are indictable for treason?

JUROR. I read his honor's opinion in your charge to the Grand Jury, and I thought it sustained the cause of justice.

JUDGE GRIER. We wish you to give us a direct answer, yea or nay.

JUROR. I think the offence treason.

JUDGE GRIER. You have made up your mind? have you ever expressed such an opinion?

JUROR. I do not remember that I have.

JUDGE GRIER. Have you formed such a conclusion in your mind that the offence at that time was high treason?

JUROR. I did, sir.

JUDGE GRIER. That is sufficient.

James Cowdon was called, and answered.

CLERK. Juror, look upon the prisoner; prisoner, look upon the juror. How say you prisoner? Challenged or not challenged?

PRISONER. Not challenged.

MR. LUDLOW. It is requested that the Juror be set aside for the present.

Robert Elliot was called and answered.

CLERK. Juror, look upon the prisoner. Prisoner, look upon the juror. How say you prisoner? Challenged or not challenged?

PRISONER. Not challenged.

MR. ASHMEAD. Swear the juror.

JUROR. I affirm.

The juror was affirmed on his voir dire.

MR. LUDLOW. Have you any conscientious scruples upon the subject of capital punishment, so that you would not, because you could not, render a verdict of guilty, death being the punishment, though the evidence required such a verdict.

JUROR. No, sir, I have not.

MR. LUDLOW. Have you formed or expressed any opinion in relation to the matter now before the court to be tried.

JUROR. No, sir.

MR. LUDLOW. Are you sensible of any such prejudice or bias therein, as may affect your action as juror?

JUROR. I do not think that I have.

MR. LUDLOW. Have you formed or expressed any opinion, as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence, charged against him in the indictment.

JUROR. Not to my knowledge, sir.

MR. LUDLOW. Have you heard any thing of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. No, sir.

MR. LUDLOW. Have you formed an opinion that the Law of the United States, known as the Fugitive Slave Law of 1850, is unconstitutional, so that you cannot for that reason convict a person indicted for a forcible resistance thereto, if the facts alleged in the indictment are proved, and the Court holds the statute to be constitutional.

JUROR. No, sir, I have not.

MR. ASHMEAD. Let him be sworn.

The juror is sworn and takes his seat in the box.

John Reynolds was called, and answered.

Mr. Reynolds was affirmed on his voir dire.

MR. CUYLER. Have you formed or expressed

any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have said something like that, where the matter was a subject of conversation.

JUDGE GRIER. It depends a great deal upon any expression of opinion. It may be a more proper reply to a subsequent question.

JUROR. I have expressed an opinion that the white persons, if there were any engaged in it, were more culpable than the absconding slaves, who were led on by them.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I cannot say that I have formed an absolute opinion about it.

MR. STEVENS. He has not expressed one.

JUROR. I have not that I know of. Not absolutely. I might have conditionally, that if they were guilty.

MR. CUYLER. Have you heard any thing of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. It is in my mind a matter of doubt. If it is not treason, I do not see how treason against the United States can be levied. My reason for saying so is, that resistance to the laws would not be permitted to go to such an extent, as to assemble in what would be a warlike appearance. It would not be suffered, but I presume it would be resisted before it presented so perilous an aspect.

JUDGE GRIER. Do you say that you have not formed any opinion whatever on this subject, either one way or the other?

JUROR. It would depend upon the circumstances developed in the testimony upon the trial.

MR. CUYLER. Have you formed any opinion from what you have seen?

JUROR. I have seen nothing but what I have read.

MR. CUYLER. Have you formed any opinion from what you have read?

JUROR. I say that if this be not treason I do not see how it can be committed against the United States.

JUDGE GRIER. You are asked to give a direct answer.

MR. STEVENS. I submit to your Honor that he is not qualified to serve as a juror.

MR. ASHMEAD. I cannot see any difficulty here and I should like to be understood upon this point. He is asked if he has formed an opinion as to whether this is treason or not; and his answer is "I do not know whether it was or not." He has not made up his mind upon the subject, "But if this was not treason I do not know what constitutes treason." I do not see how this opinion is an objection. You see in the paper that a person has stolen an article from another man's house, and when you read you form in your own mind the opinion that he committed larceny. When you read an account of a person's having been shot, you necessarily arrive at the conclusion that the offence is murder. Here the juror makes up his mind as to treason. The question is,—Has he so armed his mind, that he is not disposed to take the law from the Court as presented by it, or, whether he will act upon his own judgment in opposition to it? Let us look at the irregularity, which has been so prepared as to bring out a point like this. It is a loose one. I use it for analogous purposes. It would not be right to put the question; "have you formed an opinion as to whether it is unconstitutional or not?" It does not matter a straw. The question, I say again, is,—Have you so formed an opinion, that if the Court instructs you to the contrary, you will still hold to it? It is this way in reference to the juror. He has read an account, and he thinks it is such an offence. He is not certain. But if he has formed an opinion that shall interfere with his judgment against the law of the Court, I do say that he ought to be challenged. There is another point which I wish to mention. This is a subject upon which almost every man, woman and child, has formed an opinion. A simple opinion, by the witness that a certain thing amounts to a certain offence, does not declare an expression of it, neither does it affirm that he will not take the rule of the Court upon it.

JUDGE GRIER. I do not understand the witness to say that he has formed an opinion, but that he is unsettled.

MR. STEVENS. Perhaps your Honor does not hear the latter part of the answer, "but that if this is not treason, I do not see how it can be perpetrated against the United States."

JUDGE KANE. By the levying of war, because he knows that a large army would not be allowed to assemble.

JUDGE GRIER. The distinction stated by the Court, which makes this case to differ from others, is, that a person who has made up his mind, that this transaction was treason, has thereby passed upon a most material fact; to wit, the intention of the parties engaged in it.

JUROR. I say, that it is doubtful in my mind, whether the offence charged against these parties is treason or not; but if it be not treason, I do not see how that crime can be committed against the government of the United States.

MR. STEVENS. That is the answer the juror gave before. If he says that, I don't see that it is possible for a man to make up his mind more strongly upon a subject, when he knows that there is treason in the United States, and your Honors will tell him that it can be committed And with this opinion he must entertain a bias which the Court do not admit.

MR. COOPER. This may turn out to be a matter of a great deal of importance in the progress of this trial, as to whether the opinion expressed by the witness, is cause of challenge or not. Now, I confess I cannot see in the light that the counsel for the prisoner see it. Is the witness to be excluded for having formed a correct opinion in relation to the matter? If, in

view of the facts that are presupposed in this case, he were to say he had made up his mind it was not treason, and the Court being clearly satisfied from the facts charged in the indictment, when proved that it is not made out treason, where would be the ground of challenge, then, on the other side? If he has made up his mind correctly, without any relation to the prisoner's guilt, am I to be told that it is sufficient ground for a challenge. If it be so, as I suggested, it will take us a long period before we arrive at a panel of impartial jurors, and who are without bias. Now, I think it is not enough that the juror has said that, from the evidence, furnished by rumor, that he regards the offence treason, I do not suppose it is enough to authorize a challenge. But if in addition to that you connect the prisoner with it, and the remark is made as to *his* guilt or innocence, then it is, of course, cause for challenge. The juror, in this particular case, if I understand him, said, that "he was open to receive and act upon the instructions given by the Court upon the law." If that be so, in addition to the other reasons I have suggested, I cannot see why he should be excluded; and it seems to me that there is a necessity that we should have this question settled here, as we shall have the same questions propounded, and the same answers, I expect, from the gentlemen of the jury who are in the habit of reading the newspapers, as I presume every one of them is. It therefore appears to me that this should be settled here. I do not think that, having made up a correct judgment as to whether a charge in the indictment is treason or not, is cause for a challenge.

MR. READ. "I consider this to be only one side of the question, and if the answer was against us, we should never have the benefit of the "*pro*" and "*con.*" The question might have been put only in one way. But what I understand the intention of the Court is, to get men that will stand untainted by mere rumors. I have no objection to Mr. Reynolds, but he has distinctly asserted in effect, that he has made up his mind that it is treason. That is the result. There is another matter in addition to this, Sir, which bears upon the prisoner. He has not only formed his opinion, if I understand him by his evidence, that it is not expected (to cite Lord Coke, and which authority I dont believe he has looked at of late,) "a standing army would be levied," by any person in the United States. Yet still he has formed an opinion that if there can be treason, this is treason. He has also gone a step further, and shows a bias and prejudice against the prisoner. Therefore, the question naturally arises, whether that very expression is not a bias or prejudice against the prisoner on trial. It appears to me therefore, that upon the two opinions given, we are entitled to a challenge; for the course we have taken was proposed by the U. S., and the answers grew out of those propositions."

MR. ASHMEAD. "Your honor understands him to say, that the white men were guilty, if there is guilt. I wish this to be understood."

JUDGE KANE. "The Court is of opinion, that the witness is not disqualified for sitting as a juror, (though he has formed an opinion of the law,) if when instructed by the Court, that that opinion is erroneous, that opinion will cease to influence him in his action as a juror. If the juror upon being asked the question, shall say, that he has formed such an opinion upon the law, that it will influence his action as a juror notwithstanding that the Court may instruct him otherwise, the Court would regard it as good cause of challenge."

JUDGE GRIER. I would observe, that he has not made up his mind as to *law*, but to a certain inference that might arise or might not, it does not affect his competency. It is a mere sort of consequence that might arise, it does not alter the opinion. We do not construe his opinion as to the guilt of the white men, as a prejudice against the defendant at all.

The prisoner challenges the juror.

MR. PENROSE. If your honor please, one of the jurors is an associate judge of the county of Cumberland, and he has requested me to mention that he is required by law, to attend, in the month of December, to hold an Orphans' Court in that county.

JUDGE GRIER. What is the juror's name?

MR. PENROSE. John Rupp.

JUDGE GRIER. If he is called on this case and serves, we will discharge him from attendance to the rest of his duties.

John Horn was called, and answered.

MR. READ. Swear the juror.

CLERK. You do swear that you will true answers make to such questions as shall be put to you, touching your competency to sit as juror on this cause?

MR. READ. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. If the word matter embraces the question of treason, I have.

MR. READ. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have formed an opinion that the act does not constitute treason, and have expressed it.

MR. STEVENS. Does your Honor think that he would change his opinion if directed by the Court?

JUROR. If the Court made it clear to me to be different from my present view of the law, I would change my opinion.

MR. READ. We do not challenge, sir.

JUDGE GRIER. I am not satisfied with his last answer.

MR. STEVENS. We have no cause for challenge.

MR. ASHMEAD. If I understand the answer of this witness, then we have no peremptory challenges, and can set him aside until the panel is gone through. I think there is reason on the part of the Government. If I understand him, he says he "thinks it is not treason, and he says his mind is so settled that it would not be subject to any change by the Court."

JUROR. I do not say so; I mean the subject.

I do not speak with regard to the individual at all.

MR. ASHMEAD. Mr. Horn, what was your answer in reference to the question put to you, as to whether the Court could change your opinion as to treason. I think, if your Honor please, a man who asserts that he has made up his mind on a question of guilt, is biassed and prejudiced, and we challenge him for cause.

JUDGE GRIER. The juror can withdraw.

James Wilson called and answered.

CLERK. Juror, look upon the prisoner. Prisoner, look upon the juror. How say you, prisoner, challenged or not challenged?

PRISONER. Not challenged.

MR. ASHMEAD. Swear the juror.

The juror is sworn on his voir dire.

MR. LUDLOW. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. Not that I am aware of.

MR. LUDLOW. Are you sensible of any such prejudice or bias as may affect your action as juror?

JUROR. I think not.

MR. LUDLOW. Have you formed or expressed any opinion as to the guilt or innocence of the accused or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I am not sensible that I have.

MR. LUDLOW. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. No, I think not.

MR. LUDLOW. Have you formed an opinion that the law of the United States, known as the "*Fugitive Slave Law* of 1850," is unconstitutional, so that you cannot, for that reason, convict a person indicted for a forcible resistance thereto, if the facts alleged in the indictment are proved, and the Court hold the statute to be constitutional?

JUROR. As far as I am a judge, I believe it is constitutional.

MR. ASHMEAD. We have no objection to the juror.

JUDGE GRIER. You are not asked to say, whether it is or not, but whether you have formed such an opinion on it, that you will not be convinced by the Court.

JUROR. I have formed no such opinion.

MR. ASHMEAD. Let the juror be sworn.

Juror sworn, and takes his seat in the box.

John Krause is called and answered.

MR. CUYLER. Swear the juror, if you please.

The juror is sworn on his voir dire.

MR. CUYLER. Have you formed, or expressed any opinion as to guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. No, sir.

MR. CUYLER. Have you heard anything of this case, which has induced you to make up your mind as to whether the offence charged in the indictment, constitutes treason or not?

JUROR. I have not expressed an opinion, and should be governed by the testimony in the case.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I think I have not expressed an opinion. Another matter in the first question is, I am conscientiously scrupulous about the punishment of death.

JUDGE KANE. Put the first question to him.

JUROR. It would be very painful for me to serve, when I should be required to render such a verdict.

JUDGE GRIER. That may be, but is the conscientious scruple such, that you would not find him guilty if it were proved to be so in law and fact?

JUROR. I would like to excuse myself on that account, but I have not yet answered the question.

JUDGE GRIER. We are anticipating your answer. You have not yet said whether you are biased or not.

MR. STEVENS. It was at his own suggestion, the question was put to him. Not challenged.

MR. ASHMEAD. He may be set aside.

Samuel Small called and answered.

MR. READ. Swear the juror.

The juror is sworn on his voir dire.

MR. READ. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have not.

MR. READ. Have you formed or expressed any opinion relative to the matter now to be tried.

JUROR. No, sir.

MR. READ. Are you sensible of any such prejudice or bias therein, as may affect your action as juror.

JUROR. No.

MR. READ. Have you read anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. I have formed an opinion, taken from the newspaper reports.

MR. READ. What is it?

MR. STEVENS. We need not go any farther, I suppose.

JUROR. It is not so absolutely, that it might not be changed by the direction of the Court.

JUDGE GRIER. It is a notion, but have you expressed it?

JUROR. I have expressed it, but it is taken from the accounts I have read in the papers in regard to the question, whether it be treason or not.

MR. STEVENS. We challenge him for cause. Having formed and expressed an opinion, we do not think it necessary to ask him anything else.

MR. ASHMEAD. Is that within the rule? I

understand him to say, he has formed an opinion whether it is treason or not, but not so formed it, that it is not subject to the direction of the Court as to law.

MR. COOPER. Will you repeat whether you said your opinion would not be subject to change, if the Court instructed you that it was erroneous?

JUROR. I said from the newspaper reports that I have read, I thought it did not constitute treason. I was under that impression. That opinion may be changed by the direction the Court may give in the case.

MR. ASHMEAD. *May* be, or *would* be?

JUROR. *May* be of course, and *would* be also, I do not see any difference.

MR. STEVENS. We do not object, because we may find them all in that condition; perhaps we shall.

JUDGE GRIER. Ask him any other question.

MR. LUDLOW. We ask that he may be set aside.

CALEB COPE is called, but does not answer.

JUDGE GRIER. Call his name, the gentleman lives in town.

CRIER. "Caleb Cope!" "Caleb Cope!" The juror does not answer.

JUDGE GRIER. Mark him among those who are fined.

THOMAS CONNELLY was called and answered.

CLERK. Juror, look upon the prisoner. Prisoner, look upon the juror. How say you prisoner, challenged or not challenged?

PRISONER. Not challenged.

MR. ASHMEAD. Swear the juror.

Juror is sworn on his voir dire.

MR. LUDLOW. Have you any conscientious scruples upon the subject of capital punishment, so that you would not, because you conscientiously could not, render a verdict of guilty, death being the punishment, though the evidence required such a verdict?

JUROR. I have not.

MR. LUDLOW. Have you formed or expressed any opinion, relative to the matter now on trial?

JUROR. Not any.

MR. LUDLOW. Are you sensible of any such prejudice or bias as may affect your action as juror?

JUROR. Not any.

MR. LUDLOW. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have not.

MR. LUDLOW. Have you read anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment, constitutes treason or not?

JUROR. I have not, sir.

MR. LUDLOW. Have you formed an opinion, that the law of the United States, known as the "Fugitive Slave Law of 1850," is unconstitutional, so that you cannot, for that reason, convict a person indicted for a forcible resistance thereto, if the facts alleged in the indictment are proved, and the Court hold the statute to be constitutional?

JUROR. I have not.

MR. ASHMEAD. Let the juror be sworn.

Juror sworn, and takes his seat in the box.

JNO. G. WATMOUGH was called, and answered.

MR. CUYLER. Swear the juror.

The juror is sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have formed a very decided opinion, when in conversation with my fellow-citizens, and I have argued strongly against the whole business.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I do not know any of the parties who are named; I have no recollection of them.

MR. STEVENS. We challenge for cause.

JUDGE GRIER. Set him aside.

Charles Massey is called, and makes no answer.

JUDGE GRIER. He is excused for the term.

Josiah Rich was called, and answered.

CLERK. Juror, look upon the prisoner. Prisoner, look upon the juror. How say you, prisoner, challenged or not challenged?

PRISONER. Not challenged.

MR LUDLOW. We ask that this juror be set aside for the present.

Joseph Culbertson was called, and did not answer.

JUDGE GRIER. Excused for the term.

Matthias W. Baldwin was called, and answered.

CLERK. Juror, look upon the prisoner. Prisoner, look upon the juror. How say you, prisoner, challenged or not challenged?

PRISONER. Not challenged.

MR. LUDLOW. We ask that this juror may be set aside for the present.

John Richardson is called, and makes no answer.

CLERK. He is excused until Tuesday, the second.

George Smith was called, and answered.

CLERK. Juror, look upon the prisoner. Prisoner, look upon the juror. How say you, prisoner, challenged or not challenged?

PRISONER. Not challenged.

MR. LUDLOW. We ask that this juror may be set aside for the present.

Samuel Diller was called, and answered.

CLERK. Juror, look upon the prisoner. Prisoner, look upon the juror. How say you, prisoner, challenged or not challenged?

PRISONER. Not challenged.

MR. LUDLOW. We ask that this juror may be set aside for the present.

Evan Rogers is called and answers.

MR. CUYLER. Swear the juror.

The juror is sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have not.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the

accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have not.

MR. CUYLER. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. Yes, I have.

MR. STEVENS. We challenge for cause.

Joshua Elder was called on number 31.

MR. STEVENS. He is so on our list.

Jacob Dillinger is called and answers. I make an application to be discharged on account of sickness. I have a disease of the kidneys and have been bleeding all this morning, and I am very much afraid that I could not sit in the box.

JUDGE GRIER. Will you be excused for the term, for next week, or what?

JUROR. I would rather be excused for the term.

JUDGE KANE. Are you subject to the complaint?

JUROR. Yes, sir.

JUDGE GRIER. Excuse him for the term.

Hugh Ross is called and answers.

MR. CUYLER. Swear the juror.

The juror is sworn on his voir dire.

MR. CUYLER. Have you formed or expressed an opinion, relative to the matter now to be tried?

JUROR. I have.

MR. STEVENS. That is enough, if the Court please. We challenge him. That is all, Mr. Ross.

JUDGE GRIER. That is very vague, this case will not be finished until Christmas.

MR. STEVENS. Your Honors directed the questions.

MR. ASHMEAD. That was only a part of the series.

JUDGE KANE. The Court has not decided that the Court should ask the questions, but that the counsel for the prosecution may ask them.

MR. STEVENS. We thought we were at liberty to present them.

JUDGE KANE. Certainly, but not under an injunction to do so.

Franklin Vanzant is called and makes no answer.

JUDGE GRIER. Franklin Vanzant is excused until next Monday.

John Rupp is called and answers.

MR. STEVENS. Did I understand the Court to excuse Mr. Rupp, when the question came up?

JUDGE GRIER. No, sir. He said he had to attend Court in Cumberland County in December, and the Court said that if he was called and served upon this case, they would excuse him from further duty the remainder of the term, as we think it might be finished before the time comes for him to commence his public duties there.

MR. STEVENS. I am aware he has lately been elected an Associate Judge in Cumberland County.

MR. CUYLER. Swear the Juror.

JUROR. I affirm.

The juror is affirmed on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I do not know that I have formed or expressed an opinion, but I am not in favor of death, in cases like this.

JUDGE GRIER. That is no answer to the question.

MR. STEVENS. It is an answer to the question, with a supplement.

CLERK. Juror, look upon the prisoner. Prisoner, look upon the juror. How say you, prisoner, challenged or not challenged?

PRISONER. Not challenged.

MR. LUDLOW. Have you any conscientious scruples upon the subject of capital punishment, so that you would not, because you conscientiously could not, render a verdict of guilty, death being the punishment, though the evidence required such a verdict?

JUROR. No, I could not in cases of this kind. I could not go in for death in cases of this kind.

MR. COOPER. That is answer enough. Challenged for cause.

MR. STEVENS. He says in cases of this kind that he could not go in for death. He don't speak of his conscientious scruples.

MR. LEWIS. He has repugnance to death in cases of this kind. Whether that repugnance could be overcome upon a view of the law and evidence, is a question which has not yet been asked or answered. If I understand the Court, the juror is to be asked whether, (under the instructions of the Court, and an impartial view of the evidence), he will not be guided to alter his opinion under such facts. If his scruples would not prevent that, I should consider him a perfectly competent juror, or else I have misunderstood the Court.

JUDGE GRIER. I understand him to answer in the negative.

JUROR. I am not in favor of *capital punishment* at all

MR. LEWIS. I wish permission to ask him whether he is conscientiously scrupulous, so far as to make up his mind, without any regard to the directions that might be received from the Court? That is the question.

JUDGE GRIER. Have you any conscientious scruples upon the subject, so that you would not, because you conscientiously could not, render a verdict of guilty, death being the punishment, though the evidence required such a verdict?

JUROR. Yes, sir, I have.

JUDGE GRIER. He has said so over and over again. The juror may be excused for the term if he desires it.

Andrew C. Barclay is called and answers.

MR. CUYLER. Swear Mr. Barclay.

The juror is sworn on his voir dire.

MR. CUYLER. Have you formed or expressed, any opinion in relation to the matter now to be tried?

JUROR. I have.

MR. STEVENS. We challenge him, sir.

Robert Ewing is called, and answers.

MR. CUYLER. Swear, Mr. Ewing.

The juror is sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have not.

MR. CUYLER. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. I have not.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment

JUROR. I have not.

Challenged by the prisoner.

Chas. Massey is called, and answers not.

JUDGE GRIER. He was excused yesterday.

Jonathan Cook is called, and answers.

The juror was sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have.

MR. STEVENS. Challenge for cause.

John Smith is called and answers.

The juror affirms on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have formed some opinion, but have not expressed it.

MR. CUYLER Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I do not think I have.

MR. CUYLER. Have you heard any thing of this case, which has induced you to make up your mind, as to whether the offence charged in the indictment, constitutes treason or not?

JUROR. Yes, I have made up my mind as to the subject of treason, provided the facts are proved against the prisoner, not as to the guilt of the prisoner.

MR. STEVENS. I understand him to say that he has formed his opinion but not expressed it. I challenge for cause.

MR. LEWIS. I have a precedent which shows that any bias on the part of a juror, is sufficient to exclude him from a panel. Nor is it possible for himself to judge as to whether or not (owing to the impression that has already been formed in his mind) his opinion will be altered by the charge from the Court. If he has any bias whatever, that bias is sufficient to exclude him. He must be superior to all exception. "Omina exceptiona major." It is not to be argued, as to whether he has formed an opinion, or as to whether the Juror has expressed it or not. It is not to be argued that he is going into the jury-box, and under that bias that he will not discharge his duty fairly. This seems to have been the doctrine in the case of the Commonwealth against Lesher, 17, Sergeant and Rawle, 186, (which reads.) It does not deal with a juror as with a witness. We stand upon this ground. He has said "I have formed an opinion." Does not that come within the letter of this decision, when it says that any bias will be sufficient to exclude a juror, and that he must be superior to all exception. He is not asked to do that which it seems impossible for him to do. He is not to change his opinion or to ask the Court whether his opinion is to be changed or not, because that is for the judgment of the Court. In answer to the question, he says "I have made up my mind it is a case of treason if the facts are proved." He is, therefore, a judge of the law himself, and has assumed the province of a juror, after going into the jury-box, without being enlightened by the Court, so as to decide whether it is or is not a case of treason.

Whether your Honors would charge that it was treason or not, or whether his mind would be changed, it is not a question that the Court has to decide. Because the juror is to be superior to all bias and all exceptions.

MR. READ. There is another precedent with regard to this matter of changing the mind of the juror. It is to be found in page 375 of the first volume of Burr's Trial; it is as follows:

"John Roberts had thought and declared, from the reports in the public newspapers, that the prisoner was guilty of treason, though he had no doubt that his opinion might be changed by the production of other testimony. He was set aside as incompetent."

The rule then was different to what it now is, namely, that a juror was not only to form but to express an opinion. In the foregoing case the Chief Justice said the juror must be set aside, because he was incompetent.

MR. COOPER. I suppose that this case was really settled by the Court in the case of one of the first jurors who was called. The case of Mr. Walsh. It has been observed that Mr. Smith has only expressed an opinion that if the facts stated in the newspapers were true, that those facts would constitute treason, but he has not connected the prisoner with it. Has he formed any opinion as regards the guilt or innocence of the prisoner, or as to the truth of the facts stated in the newspapers. I disavow both of these. If the ground taken by the counsel for the defendant can be sustained, then a man's intelligence would be a cause for challenge. To recur again to the statement of the juror as to whether he had made up his mind upon the facts stated. Supposing that to be true, namely, that he considered the crime treason. Now every intelligent man would probably say the same upon that state of facts, if he knew them to be so, and say the crime was treason.

JUDGE GRIER. Suppose the question had been the converse, would not you have challenged him? It has been so said by some of the papers who have taken upon themselves to settle the whole law with regard to these proceedings, that this transaction is not treason. They have advanced a great many arguments, and none of them very profound; newspaper arguments generally are not. Suppose a man is biased on account of reading a certain clause in a certain paper, or that he is influenced by a peculiar class in society in which he has lived, to believe that this transaction is

not treasonable, would he be a proper man to sit here as a juror?

MR. COOPER. My idea is, he would not be.

JUDGE GRIER. Suppose on the contrary, this man, from his knowledge of the transaction, had come to the conclusion that it was treason, ought it to make any difference, as regards his capability as a juror Suppose a person saw another man break into a house, would he not form an opinion that the offence of which he was guilty was burglary? A man may be engaged in a riot, in which officers of the law are resisted, and his intention not traitorous. You have two things to prove. You may prove that this man was engaged in the transaction, and that the officers were resisted in the performance of their duties; still it may be nothing but murder. You have to determine the question of intention, and that is, whether it is treason or not. In such a case, I ask you, if he had decided that it was not treason, whether you would or would not challenge him?

MR. COOPER. I think I have comprehended the Court perfectly, and though that would be good cause of challenge, we have thought on the part of the prosecution that there was a distinction.

JUDGE GRIER. I want to hear that.

MR. COOPER. It is this, and it is a matter which the Court will take into consideration, in deciding the competency of every juror who presents himself. If the statements made, and which the juror read, contained the facts necessary to make out the charges in the indictment, and he had made up his opinion correctly upon those facts, would there not be a difference between that, and if he had made them up upon a state of facts that did not warrant the same conclusion. Do the Court apprehend the idea? We suppose the facts stated if proved, will make out the charge of treason, and we suppose that every intelligent juror, who has read the Constitution, and who has a clear and logical mind, would come to the conclusion, that that state of facts warranted him, in my opinion, in coming to the judgment that the party was guilty of treason. But if on the same state of facts which had warranted the juror in coming to a conclusion, he is to come to a different one, would it not show more of vice than in this case? Here he has formed a correct opinion of facts, but did not connect the party charged with the offence. That constitutes the distinction between this case and the one presented by Mr. Read just now. So in the case of Robinson. As to whether he had expressed himself that Aaron Burr was guilty of treason. He had not stated, that the facts did or did not constitute treason, provided they were proved. And it seems to me, that there is a very wide distinction between saying that a certain state of facts, induces him to believe that if they were proved he was guilty of treason, and to say he was guilty of treason. When you perceive a bias against a prisoner, the law will not tolerate it. It seems to me there is a vast difference between an opinion that is wrong, and a person having made up a correct judgment, in which he cannot entertain any prejudice. And we have, therefore, thought it was a proper distinction to make. For instance, if a juror were to say that he did not consider the facts in this case, as he understood them, making out a charge of treason; but if the Court gave him contrary directions, and he would be governed by them, we would consider him to be a good juror. And I do not think this case different from that. The question is now before the Court.

MR. READ. It is very difficult ever to find exactly the same case that has been decided before. In the trial of Burr, it seems to me the Chief Justice decided as if he were the tryer and every thing else. It has been stated that a juror should come quite indifferent into the box. It seems to me it would not be so, if this juror were empanelled to try this prisoner. It is your object, if possible, to get a piece of blank paper there. We cannot expect that, but we must endeavor to arrive at it as near as possible.

If therefore this juror goes into the box with an impression to be removed, the inference is that we shall have to go to work with this juror, and we are to labor at him to get this impression out of his mind. Suppose he said that he had formed his opinion that it was not treason. Then the United States must go to work to remove this impression of his mind. You want a jury to go into the box and decide upon the law and evidence as given them. That is what you want. If we could get a juror to go into a case knowing nothing of his own knowledge of the case, it would be one much to be desired. The question that he answered was in the affirmative. Supposing it had been a negative to our question. Would you not consider him a biased juror. My friend says, Yes. Why is not the converse received? Why should he not be rejected if he has made up his mind it is treason? Your honors find unbiased jurors can be got here, and therefore we only ask you to deal out (as we know you will) exactly the same justice to us as you would extend to the United States. If, therefore, the negative answer would have made the juror incompetent in view of the United States, of course the affirmative is in our favor. What does Chief Justice Marshall say on page 419 of 1st Burr's Trial, in an opinion delivered after mature reflection—

"The opinion of the Court is, that to have made up and delivered the opinion, that the prisoner entertained the treasonable designs with which he is charged, and that he retained those designs, and was prosecuting them when the act charged in the indictment is alleged to have been committed, is good cause of challenge."

Put the converse of the two propositions. Does not the same question, as showing what would be wrong against the United States, in one instance, prove it to be wrong against the prisoner in the other? When such a question as that is put, it demands the same decision on both sides. If a party has previously formed an opinion that it is treason on one side, the question is whether he is or is not an impartial juryman? That is our view of the case. We may be wrong. But put it in the way your honors did. You would think him an incompetent juror. If he has formed an opinion with regard to its being treason, it obliges us to take

upon ourselves to get out of the mind of that juryman his previous opinion. That is neither fair to the United States or to us. We want to go to a jury, who are unbiased (as far as we can) as regards both parties. Regarding neither side, and desiring nothing but strict justice between them. In law the prisoner is entitled to the benefit of a doubt in the minds of the jury, and that is all. Are we to endeavor to remove from the mind of a juror his preconceived notion that this is treason? It is asking the same question as might be proposed to the counsel for the United States in a converse shape. This would not be just to the prisoner, or to any other party.

JUDGE GRIER. It is very natural that if your neighbor's house has been broken open and robbed of all its contents, that you should come to the conclusion that it was burglary. The belief of such a thing should not prevent a juror being sworn in a panel who are trying that case on which he has formed such an opinion. Surely it would not be sufficient reason to challenge him. But if a person comes to a conclusion that such a transaction as took place at Christiana is *not* treason, and *that* is admitted to be a ground of challenge by one side, I cannot see why, if his opinion is made up that it *is* treason, it is not sufficient ground of challenge for the other; the question of treason or not treason, being one of the great questions of the case, and depending on intention, which is a question of fact.

JUDGE KANE. The challenge is sustained.

John Clendenin is called and answers.

The juror is affirmed on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have neither formed nor expressed an opinion concerning it.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have not.

MR. CUYLER. Have you heard any thing of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. I have not heard anything, and I have avoided all conversation and intercourse with men which would lead me to form an opinion as to his guilt or innocence.

Challenged by the prisoner.

Peter Martin is called and answered.

Not challenged by the prisoner.

The juror affirms on his voir dire.

MR. LUDLOW Have you any conscientious scruples upon the subject of capital punishment, so that you would not, because you conscientiously could not render a verdict of guilty, death being the punishment, though the evidence required such a verdict?

JUROR. I have not.

MR. LUDLOW. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. No, sir.

MR. LUDLOW. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. I think not.

MR. LUDLOW. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. No, sir.

MR. LUDLOW. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. Yes, sir; I read an account in the paper, and was rather under the impression that it might be treason,

MR. LUDLOW. Have you formed an opinion that the law of the United States, known as the Fugitive Slave Law of 1850. is unconstitutional, so that you cannot, for that reason, convict a person indicted for a forcible resistance thereto, if the facts alleged in the indictment are proved and the Court hold the statute to be constitutional?

JUROR. I have not.

MR. ASHMEAD. Let the juror be sworn.

JUROR. I affirm.

JUDGE GRIER. Are you conscientiously scrupulous about taking an oath.

JUROR. Yes, sir.

Juror affirmed, and takes his seat in the box.

Thomas H. White is called and answers.

The juror is sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. As to the matter to be tried, I have formed an opinion expressly,

MR. CUYLER. I repeat the question. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have.

MR. CUYLER. I challenge for cause.

George G. Brush is called and answers.

The juror is sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. No, sir.

MR. CUYLER. Have you formed or expressed any opinion as to to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have not. No.

MR. CUYLER. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. No, sir, I have not.

The prisoner challenges the juror.

Lesher Trexler is called and answers.

Not challenged by the prisoner.

MR. LUDLOW. I ask that this juror may be set aside for the present.

Sketchley Morton is called and answers.

Not challenged by the prisoner.

MR. LUDLOW. I ask that this prisoner may be set aside for the present.

Samuel Hughes was called and answered.

The Juror is sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have not.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have not.

MR. CUYLER. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. I have read about it and made up my mind.

MR. CUYLER. Challenged for cause.

Matthias Richards is called and answers.

The Juror is sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have not.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have not.

MR. CUYLER. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. I have not.

The prisoner challenges the juror.

Robert Smith is called and answers.

Not challenged by the prisoner.

The Juror is sworn on his voir dire.

MR. LUDLOW. Have you any conscientious scruples upon the subject of capital punishment, so that you would not, because you conscientiously could not render a verdict of guilty, death being the punishment, though the evidence required such a verdict?

JUROR. No, sir.

MR. LUDLOW. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have not.

MR. LUDLOW. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. No, sir.

MR. LUDLOW. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. No, sir.

MR. LUDLOW. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. No, sir.

MR. LUDLOW. Have you formed an opinion that the law of the United States, known as the Fugitive Slave of 1850, is unconstitutional, so that you cannot for that reason convict a person indicted for a forcible resistance thereto, if the facts alleged in the indictment are proved and the Court hold the statute to be constitutional?

JUROR. I have not, sir.

MR. ASHMEAD. Let him be sworn.

The Juror is sworn, and takes his seat in the box.

Marmaduke More is called and answers.

MR. CUYLER. Let the Juror be sworn.

JUROR. I do not swear.

JUDGE GRIER. Have you conscientious scruples with regard to swearing?

JUROR. No, sir, but I never do.

JUDGE GRIER. Then you must be sworn, sir.

The juror is sworn on his voire dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. Nothing definite or positive.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have not, that I know of. I am not positive. In the midst of this excitement and public controversy, I might have said something. I do not remember now.

MR. CUYLER. Have you heard any thing of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. No, sir.

The prisoner challenges the Juror.

JUDGE GRIER. The Court is adjourned till 10 o'clock to-morrow.

Wednesday, November 26th, 1851.

COURT WAS OPENED AT 10 O'CLOCK.

PRESENT, JUDGES GRIER AND KANE.

On motion of Mr. Ashmead, Robt. J. Brent, Esq. of Maryland was admitted to practice as an attorney of this Court.

The fine of Caleb Cope, juror, was remitted, and he was excused on account of ill health.

Jurors called.

Jurors empanelled were called, and all answered to their names.

Joshua Elder is called and answers.

CLERK. Juror, look upon the prisoner; prisoner, look upon the juror. How say you? Challenged or not challenged.

PRISONER. Not challenged.

MR. LUDLOW. We ask that this juror may be set aside for the present.

William Watson is called and answers.

Not challenged by the prisoner.

MR. LUDLOW. I ask that this juror be set aside for the present.

John T. Bazley is called and answers.

Affirmed on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have.

MR. STEVENS. We challenge for cause.

William Williamson is called and answers.

Affirmed on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have not.

MR. CUYLER. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. I am not.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have not.

MR. CUYLER. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in he indictment constitutes treason or not?

JUROR. I have not.

CLERK. Juror, look upon the prisoner; prisoner, look upon the juror. How say you? Challenged or not challenged?

PRISONER. Challenged.

Philip Smyser is called and answers.

Affirmed on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have not.

JUDGE GRIER. This question being one of a class, and being particularized by more which follow, the juror must of course understand it as referring to the matters after it.

MR. STEVENS. We might strike that out altogether.

JUDGE GRIER. I think it would be better stricken out. For if he had formed an opinion that this would not be finished before New Year's, he would have formed an opinion relative to the case. It embraces all the others. There was a precedent for it, was the reason we allowed it.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have said that I have not—except whether it is treason or not.

MR. CUYLER. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. No, sir.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have not.

JUDGE GRIER. I had intended to strike out something in that question. I think it possible that he might suppose some were concerned who had not anything to do with it, and if he had formed an opinion about them, it would come within the general words of that question. But proceed now—thus far I believe no injury has arisen from it.

MR. CUYLER. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. Yes, sir, on that subject I have formed an opinion.

Challenged for cause.

Frederick Hipple is called and answers. Not challenged by the prisoner.

MR. LUDLOW. I ask that this juror be set aside for the present.

Levi Merkle is called and answers. Not challenged by the prisoner.

MR. LUDLOW. We ask that this juror be set aside for the present.

James Harper is called and answers. Sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have read the newspapers, and as far as they shed any light upon the subject, I have come to the conclusion that the laws had been violated in Lancaster county, and if the offenders could be identified they should be punished.

JUDGE GRIER. That amounts to nothing.

MR. CUYLER. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. No, sir.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. No, sir.

MR. CUYLER. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. I have not—that belongs to the Court.

Challenged by the prisoner.

Paul S. Preston is called and answers. Not challenged by the prisoner.

MR. LUDLOW. I ask that this juror be set aside for the present.

Edward Davies is called and answers. Not challenged by the prisoner.

MR. LUDLOW. I ask that this juror be set aside for the present.

Moses W. Coolbaugh is called and answers. Sworn on his voir dire.

MR. CUYLER. Are you a post-master?

JUROR. No, sir.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. When the account was published in the papers, I expressed the opinion that it was a great outrage upon the community.

MR. CUYLER. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. Not at all, sir.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. No, sir.

MR. CUYLER. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not

JUROR. No, sir.

Challenged by the prisoner.

David West is called and answers.

Not challenged by the prisoner.

MR. LUDLOW. I ask that this juror be set aside for the present.

Daniel O. Hitner is called and answers.

Sworn on his voir dire.

MR. CUYLER. Have your formed or expressed any opinion relative to the matter now to be tried?

JUROR. Not that I know of, sir.

MR. CUYLER. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. No, sir.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. Not that I know of, sir.

MR. CUYLER. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. I might have thought something about it. I dont know that I have made up my mind about it.

Challenged by the prisoner.

William R. Saddler is called and answers.

Not challenged by the prisoner.

Sworn on his voir dire.

MR. LUDLOW. Have you any conscientious scruples upon the subject of capital punishment, so that you would not, because you conscientiously could not, render a verdict of guilty, death being the punishment, though the evidence required such a verdict?

JUROR. No, sir.

MR. LUDLOW. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. No, sir.

MR. LUDLOW. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. I am not, sir.

MR. LUDLOW. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I am not conscious of having done so.

MR. LUDLOW. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. No, sir.

MR. LUDLOW. Have you formed an opinion that the law of the United States, known as the Fugitive Slave Law of 1850, is unconstitutional, so that you cannot, for that reason, convict a person indicted for a forcible resistance thereto, if the facts alleged in the indictment are proved and the Court hold the statute to be constitutional?

JUROR. No, sir.

MR. LUDLOW. Let him be sworn.

Juror sworn, and takes his seat in the box.

James M. Hopkins is called and answers.

Not challenged by the prisoner.

Sworn on his voir dire.

MR. LUDLOW. Have you any conscientious scruples upon the subject of capital punishment, so that you would not, because you conscientiously could not, render a verdict of guilty, death being the punishment, though the evidence required such a verdict?

JUROR. I have not.

MR. LUDLOW. Let him be sworn.

Juror sworn, and takes his seat in the box.

James Whitehill is called and answers.

Sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have not.

MR. CUYLER. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. I am not, sir.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have not.

MR. CUYLER. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. I have not, sir.

Challenged by the prisoner.

George A. Madeira is called.

Not challenged by the prisoner.

MR. LUDLOW. I ask that the juror may be set aside for the present.

William H. Keim is called and answers.

Not challenged by the prisoner.

MR. LUDLOW. We ask that this juror be set aside.

William Stevens is called and answers.

Affirmed on his voir dire.

MR. CUYLER Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I may, by reading the newspaper accounts, have formed some opinion, but not anything as to the criminality of these men who are about to be tried.

MR. CUYLER. Have you or not, formed an opinion relative to the matter now to be tried?

JUROR. I have not formed an opinion as to the guilt or innocence of the parties, but have formed some opinion as to the newspaper accounts.

MR. CUYLER. Are you sensible of any such prejudice or bias therein, as may affect your action as juror?

JUROR. No.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. No.

MR. CUYLER. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. No.

Challenged by the prisoner.

John A. Brown is called and answered.

Sworn on voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have read the newspaper account and of course have supposed the parties engaged in that affair had committed a breach of the peace, but I have neither formed nor expressed an opinion in regard to the persons now to be tried?

MR. CUYLER. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. No, sir.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. No, sir.

MR. CUYLER. Have you heard any thing of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. I am not a competent judge of what treason is. I shall be governed by the Court on that subject; I have not made up my mind.

Challenged by the prisoner.

Hartman Kuhn is called and answers.

Sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have.

Challenge for cause.

Martin Newcomer is called and answers.

Sworn on his voir dire.

MR. CUYLER. Have you any conscientious scruples upon the subject of capital punishment, so that you would not, because you conscientiously could not render a verdict of guilty, death being the punishment, though the evidence required such a verdict?

JUROR. I have formed an opinion about this subject.

Challenge for cause

MR. COOPER. That answer is not enough of itself.

JUDGE GRIER. If the other party wish to particularize, they can make further questions, but if not, the Court will let him go.

MR. STEVENS. We suppose that is enough in the first instance.

JUDGE GRIER. Let him go, if you are both afraid of him.

George Cadwalader is called and answers.

Sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I cannot say that I have not formed any opinion. I have read what has been published.

MR. CUYLER. Have you formed an opinion from what has been read?

JUROR. I have impressions and perhaps opinions. I have great difficulty in answering this question. I do not think I have formed any opinion which would render me incapable of being a competent juror.

MR. CUYLER. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. I am not.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have not.

MR. CUYLER. Have you heard any thing of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. No, I have not.

Challenged by the prisoner.

MR. LUDLOW. We ask that the juror called immediately before Mr. Cadwalader, should be recalled, in order to put to him certain questions, which we think necessary and which we did not put then. We consider it essential to a proper understanding of the man's views upon the subject. We were about to put the questions, when the Clerk called Mr. Cadwalader.

JUDGE GRIER. If it was the fault of the Clerk, it should not injure you.

MR. STEVENS. When Mr. Cadwalader was called, they could have said they wished him postponed. But then this man has been set aside. I submit that this is irregular, unless they will allow us to withdraw challenges."

JUDGE GRIER. I think we refused them the right to withdraw a challenge—and this is passed now—you should have put these questions at the time. We do not consider that answer sufficient of itself to exclude a juror—but you can particularize it by the other questions. If he answers the others in the negative, it cures the effect of the first.

Robert Patterson is called and answers. Sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried.

JUROR. It is a question very difficult for me to answer—I have read all the accounts—I have thought much upon it, and conversed a good deal upon it—I allude to the affair of Christiana. I have decided impressions, but I cannot say I have come to a settled judgment, I rarely do upon

a public matter like this, till the facts alleged are either admitted or proved. I cannot say that I have formed an opinion.

Mr. Cuyler. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

Juror. None as a juror.

Mr. Cuyler. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

Juror. None whatever.

Mr. Cuyler. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

Juror. I have not, I should be governed as to the facts by the evidence—and as to treason, by the Court, believing that they are better qualified to decide than I am.

Challenged by the prisoner.

Andrew K. Witman is called and answers. Sworn on his voir dire.

Mr. Cuyler. Have you formed or expressed any opinion relative to the matter now to be tried?

Juror. No, sir.

Mr. Cuyler. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

Juror. No sir.

Mr. Cuyler. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

Juror. I have not.

Mr. Cuyler. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

Juror. I have formed some opinion about that—I take it to be pretty near a similar case to the Fries' matter, which happened at the place where I was from.

Challenged for cause.

Mr. Cooper. We do not think this is sufficient. I believe it was decided in this very Court even, that a juror who sat in a case where the defendant was charged with an offence, could sit and decide in another case where the defendant was charged with the same offence. It was so in the case of Wilson and Porter.

Mr. Cuyler. The objection proceeds upon the supposition that this question is wrong, but the Court have decided that it is a competent question, and his answer one way or the other is sufficient.

Judge Grier. He can be asked for an explanation of what he has stated.

Mr. Cooper. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

Judge Grier. He has already answered that he has not.

Mr. Cooper. It seems to me then, that that qualifies his opinion.

Mr. Stevens. If answering the third question in the negative is to qualify all the rest, I cannot see why the rest are to be asked. I am sure this Court and the gentlemen do not want this surplus tautology, which amounts to nothing. I understand the juror to mean that he looks upon the Christiana affair, as like the affair of Fries, which happened in his own country. That has been decided to be treason, and the party referred to was convicted. If you can get at a distinct opinion, this gentleman has formed a very intelligent, or at least a very intelligible opinion.

Mr. Cooper. (To the Juror.) Have you made up your mind upon the facts of this case that this is treason?

Mr. Stevens. That is not one of the questions.

Judge Grier. The witness has not given a direct answer, yes or no, and they may ask an explanation of it.

Mr. Cooper. Have you so made up your mind as to the character of the crime, that it could not be altered in the course of the trial?

Judge Grier. That is not a proper question—they must not have the burden of changing his mind. This question would not be a good precedent except on the ground that the intention of the parties concerned in a public transaction of this character—the intention of each and all of them is one of the matters which go to make up treason. If he had fully made up his mind that this was not treason, it would be an opinion upon a portion of the case, to wit, the intention of the parties concerned, which would make him unfit to be a juror in the case. Unless a man has taken care to inform himself upon the subject, he may not have formed an opinion, and I believe plenty could be found who have not. I am sure I have not made up my mind.

Judge Kane. I would say in addition to what has been said by Judge Grier, that I fully appreciate the vast importance of having jurors entirely unbiassed—without an opinion or a decided impression even, upon any of the points involved in the case. I can imagine that in the progress of these trials—supposing them all to be brought before jurors in succession—that it may become indispensable that a trial may be had to modify in some degree hereafter, what have been the rulings of the Court. If it should turn out in the result that that portion of the community from among whom our jurors must be chosen, come to us pre-occupied by newspaper reports, but yet capable according to their best judgment of rendering a true and faithful verdict according to the law and the evidence, it may be indispensable to reconsider what now under a different aspect of facts the Court may rule—regarding it as so eminently desirable that if it be possible, jurors in all these cases should be without any bias on one side or the other.

Judge Grier. The juror can go.

Mr. Ludlow. Might we not ask the juror to explain his answer?

Judge Grier. I thought we had done that.

Mr. Ludlow. No, sir, we have not.

Mr. Read. May it please your honor, I think here is as satisfactory an answer as could be given to their question. He thought the case like that of a particular individual who was ac-

cused, tried, and convicted of treason, and pardoned by the President of the United States; and in deciding that, he has passed upon the question of intention, which is a question to be submitted to the jury. I opposed this question yesterday, but as your honors have decided it correct, we have only to conform to it. The next question might be, "What do you mean by treason?" which we might find hard to answer; but here the juror has given the case of a man accused, tried, and convicted, and pardoned for treason; there can be no difficulty about the intention.

MR. ASHMEAD. I should like to have this gentleman explain his view fully, though it is not in this particular case, but it is as to the effect of this upon the further proceedings that I am anxious.

JUDGE GRIER. After this case has been examined and passed upon by the court and jury, it will be almost impossible that any of these jurors should not have formed an opinion as to the law, and we do not say that we shall hold to this question hereafter.

MR. ASHMEAD. That was what I wanted to guard against. If this is determined to be treason or not, by the Court, all the other jurors would take their impression from it.

JUDGE GRIER. He was discharged by the court telling him to go, supposing that you did not want to ask him anything else.

MR. ASHMEAD. I wanted him to explain what he meant.

JUDGE GRIER. I think you had better let it go. The reason we explained this question is, that there has been an attempt to fix certain things in the public mind on this subject, to anticipate the decision of this Court and jury. This morning, my hands, by the post-office, have been filled, from what is called the Athens of America, with a great deal of light upon the subject, for which I cant say I have any particular thanks to render; but they will cause me to say to the jury, avoid all papers coming from that direction. They are undertaking now to try to settle how this trial should go, thinking, perhaps, that we have not the same degree of illumination here as they have there.

MR. STEVENS. I hope your honor will extend your caution to missives from another quarter.

JUDGE GRIER. We do not want them from any quarter.

MR. STEVENS. We have seen a few from another direction, but they have not convinced me more than the others have convinced your honor.

JUDGE GRIER. They have all come from the other quarter to me. There is an attempt to prejudice the public mind, and through that the mind of the jury and Court on this subject. That is the reason why more searching questions have been allowed than usual.

MR. ASHMEAD. We should like the gentlemen to specify any of those he has seen from the other quarter.

David Cockley is called and answers.

Affirmed in his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have.

Challenged for cause.

James Penny is called and answers.

Not challenged by the prisoner.

MR. LUDLOW. We ask that this juror be set aside.

Ferree Brinton is called and answers.

Not challenged by the prisoner.

MR. LUDLOW. I ask that this juror be set aside for the present.

Patrick Brady is called and answers.

Sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have.

Challenged for cause.

MR. LUDLOW. I will put two or three of the other questions. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. I am not.

Mr. LUDLOW. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have not.

MR. LUDLOW. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. I have not.

MR. LUDLOW. We submit, that on the answers the juror has given, he is qualified to sit as a juror?

JUDGE GRIER. He has sufficiently explained his first answer; we think it is not material.

MR. STEVENS. The juror says he has formed an opinion, and yet answers in the negative to all the other questions. I should like to know what the opinion is.

JUROR. I have formed an opinion upon the outrage against the laws in the Christiana affair.

MR. G. L. ASHMEAD. I think the counsel have not the right to ask him what his opinion is, if he says it is not such as to affect his action as a juror in this case.

MR. STEVENS. Am I to understand, then, that we are confined to these questions?

JUDGE GRIER. If he does not give a direct answer, you may ask an explanation. I consider the subsequent questions as particularizing the first, and if he answers them in the negative, the first amounts to nothing.

MR. STEVENS. I may ask, then, what he means by his first answer?

JUROR. That the laws were outraged in this Christiana case.

JUDGE GRIER. That is no reason for excluding him; I suppose every man in the community has formed that opinion.

Juror challenged by the prisoner.

John O. Deshong is called and answers.

Not challenged by the prisoner

MR. LUDLOW. I ask that the juror be set aside for the present.

George Mark is called and answers.

Not challenged by the prisoner.

MR. LUDLOW. I ask that he may be set aside.

Strange N. Palmer is called and answers.

Not challenged by the prisoner.

Sworn on his voir dire.

MR. LUDLOW. Have you any conscientious scruples upon the subject of capital punishment, so that you would not, because you conscientiously could not render a verdict of guilty, death being the punishment, though the evidence required such a verdict?

JUROR. I have long cherished scruples of conscience on the subject; not such, however, as having voluntarily taken the oath of a juror, would induce me to violate that oath, having voluntarily taken the oath.

MR. LUDLOW. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. As editor of a public paper, I have read and published very considerably upon the subject, and have necessarily formed some conclusions; not as to the guilt or innocence of the parties, however.

MR. LUDLOW. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. I am not.

MR. LUDLOW. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have not, for I know nothing of them.

MR. LUDLOW. Have you formed an opinion that the law of the United States, known as the Fugitive Slave Law of 1850, is unconstitutional, so that you cannot for that reason, convict a person indicted for a forcible resistance thereto, if the facts alleged in the indictment are proved, and the court hold the statute to be constitutional?

JUROR. I have not.

MR. G. L. ASHMEAD. What do mean, when you say, having taken the oath *voluntarily?*

JUROR. I mean, I cannot voluntarily take the oath.

MR. ASHMEAD. If you were sworn in this jury box, you would not take the oath voluntarily?

JUROR. I dont know that I may called to do that. I cannot conscientiously take the oath; but, having taken it, I would feel bound by it, it without reference to the death penalty, I should take the oath, and then the question should come up, I would feel bound by my oath.

MR. ASHMEAD. If you take your oath upon this jury, would it be voluntarily?

JUROR. It has not arrived at that point, and I cannot give my opinion.

JUDGE GRIER. Wait till the oath is tendered to him, and then he can say that.

MR. ASHMEAD. I wish him to explain; he said if he took the oath voluntarily, his opinion would be so and so.

JUROR. I said at the same time, that I could not take it voluntarily.

MR. LUDLOW. I ask that this juror be set aside for the present.

Franklin Starbird is called and answers. Not challenged by the prisoner.

MR. LUDLOW. I ask that he be set aside.

Isaac Mather is called and answers. Not challenged by the prisoner.

MR. LUDLOW. I ask that the juror be set aside for the present.

John B. Rutherford is called and answers.

Not challenged by the prisoner.

MR. LUDLOW. I ask that he may be set aside for the present.

Diller Luther is called and answers. Sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have formed no conclusive opinion; what impressions were made upon my mind by the accounts at the time, I have expressed.

MR. CUYLER. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. I am not.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. No, sir.

MR. CUYLER. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment is treason or not?

JUROR. I have not.

Challenged by the prisoner.

James Gowen is called and answers. Sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I may have expressed an opinion in relation to the subject being a bad transaction, but I have not expressed an opinion as to the guilt of the prisoner. I have been talking of the subject frequently. I may have merely said it was a shocking bad action.

MR. CUYLER. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. No, sir.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. No, sir.

MR. CUYLER. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. I have not come to a conclusion upon that subject. I have heard it spoken of, and have spoken of it. It is merely an impression on my mind in regard to it.

MR. STEVENS. Have you expressed an opinion as to whether it was treason or not?

JUROR. I think I have not.

MR. STEVENS. Have you made up your mind?

JUROR. I cannot say that I have made up my mind. Under the circumstances in which I am now, I could not say that I have made up my mind. I may have an impression in relation to it.

MR. STEVENS. What circumstances do you mean?

JUROR. As a juror.

MR. STEVENS. Before you came into the court room, had you?

JUROR. No, sir.

JUDGE GRIER. Have you made up your mind upon that question?

JUROR. No, sir; I have had an impression in relation to it, as to whether it was treason.

Challenged by the prisoner.

David Lyons is called and answers. Sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I certainly have expressed an unfavorable opinion towards the course of these gentlemen.

MR. STEVENS. We ask that he shall be set aside.

MR. LUDLOW. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. Not at all.

MR. LUDLOW. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. No, sir.

MR. LUDLOW. Have you heard any thing of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. I have not, I dont presume to be the judge of that matter.

MR. LUDLOW. He is a competent juror.

MR. STEVENS. The first answer it seems to me, is sufficient to set him aside; he has expressed an unfavorable opinion as to the course of these gentlemen.

JUDGE GRIER. I understand him, as to this transaction.

MR. STEVENS. He comes here prejudiced against them; he is certainly not above all bias.

MR. LUDLOW. He has qualified the first by his answer to the others.

JUDGE GRIER. The vagueness and generality of the first is shown by his answering all the others in the negative, and it only shows what we have said before.

MR. READ. He has expressed an unfavorable opinion of the course of these gentlemen—that is, of Mr. Hanway.

JUROR. In that particular act.

JUDGE KANE. One word has been referred to, in the remarks which I think did not fall from the juror. What was your observation in regard to the transaction?

MR. LEWIS. I have it sir. He said, "I have expressed an unfavorable opinion of these gentlemen"—was not that it?

JUROR. Yes, sir.

MR. READ. He would go into the jury box unfavorably impressed towards the prisoner. The object in Burr's trial—and I believe it is the wish of your honors, to have those who have not expressed a favorable or unfavorable opinion.

JUDGE GRIER. Suppose a man has been informed that a burglary or arson has been committed, and he has said "the fellow who did that ought to be sent to the Penitentiary"—would that make him incapable of being a juror? If he has expressed an unfavorable opinion as to this defendant, it would, but if it was a general opinion as to this transaction, it would not incapacitate him.

MR. READ. (To the juror.) Who did you mean by "these gentlemen"—did you mean to include Castner Hanway?

JUROR. I knew none of them individually.

MR. READ. Did you read their names?

JUROR. Yes, I had seen the names of some published.

MR. READ. Did you see the name of Castner Hanway published?

JUROR. It is likely I did.

JUDGE GRIER. Do you know him?

JUROR. No, sir.

JUDGE GRIER. Have you ever expressed an opinion as to his guilt or innocence in the matter?

JUROR. No, sir.

JUDGE GRIER. Did you mean to express any thing more than an opinion against the transaction, and that the persons engaged in it ought to be punished?

JUROR. No, sir.

JUDGE GRIER. Then I do not consider that, taken with his answer to the other questions, is sufficient to exclude him.

Challenged by the prisoner.

John S. Shroeder is called and answers.

Sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have not.

MR. CUYLER. Are you sensible of any such prejudice or bias therein as may affect your action as a juror?

JUROR. No, sir.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have not, that I am aware of.

MR. CUYLER. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. I have not.

Challenged by the prisoner.

Jacob Grosh is called and answers.

Not challenged by the prisoner.

MR. LUDLOW. We ask that this juror may be set aside for the present.

John Junkin is called and answers.

Not challenged by the prisoner.

The juror is sworn on his voir dire.

MR. LUDLOW. Have you any conscientious scruples upon the subject of capital punishment, so that you would not, because you conscientiously could not render a verdict of guilty, death being the punishment, though the evidence required such a verdict?

JUROR. No, sir.

MR. LUDLOW. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have not.

MR. LUDLOW. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. No, sir.

MR. LUDLOW. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have not

MR. LUDLOW. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. Oh, no.

MR. LUDLOW. Have you formed an opinion that the law of the United States, known as the Fugitive Slave Law of 1850, is unconstitutional, so that you cannot for that reason, convict a person indicted for a forcible resistance thereto, if the facts alleged in the indictment are proved and the Court hold the statute to be constitutional?

JUROR. Well, that I would take from the Court.

MR. ASHMEAD. Let the juror be sworn.

Juror sworn, and takes his seat in the box.

Jacob Kichline is called and answers.

The juror was sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. No sir.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. No, sir.

MR. CUYLER. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. No, sir.

Challenged by the prisoner.

George Ladley is called and answers.

Not challenged by the prisoner.

MR. LUDLOW. We ask that this Juror may be set aside for the present.

John H. Kinnard is called and answers.

The juror is sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. Not that I am aware of.

MR. CUYLER. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. No, sir.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. Not that I know of.

MR. CUYLER. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. No, sir.

Not challenged by the prisoner.

MR. LUDLOW. We ask that this juror may be set aside for the present.

CRIER. The panel is exhausted.

MR. ASHMEAD. The Marshal informed me that there were 83 in attendance, and only 82 have been called.

William Stavely is called and answers.

The juror is sworn on his voir dire.

MR. CUYLER. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have not sir.

MR. CUYLER. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror.

JUROR. I have not.

MR. CUYLER. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have not.

MR. CUYLER. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. No, sir.

Challenged by the prisoner.

John Miller is called and answers.

JUROR. If the Court please I am in a bad state of health. Even coming one square I have got a pressure on my chest, and I am subject to a chronic disease.

JUDGE GRIER. What is your age?

JUROR. I am in my 68th year.

JUDGE GRIER. I suppose you can stand excused for the term.

MR. ASHMEAD. Let the absentees be called again.

MARSHAL. There are only three absent, now viz.

Robert Butler.

Abraham R. McIlvaine.

Isaac Meyers.

JUDGE GRIER. Let the first juror that was set aside yesterday be called; I believe that is the order of business.

MR. ASHMEAD. Yes, sir.

Solomon Newman is called and answers.

The juror is sworn on his voir dire.

Mr. LUDLOW. Have you any conscientious scruples upon the subject of capital punishment, so that you would not, because you conscien-

tiously could not render a verdict of guilty, death being the punishment, though the evidence required such a verdict?

JUROR. No.

MR. LUDLOW. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. Not that I know of.

MR. LUDLOW. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. I think not.

MR. LUDLOW. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. I have not.

MR. LUDLOW. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. No, sir.

MR. LUDLOW. Have you formed an opinion that the law of the United States, known as the Fugitive Slave Law of 1850, is unconstitutional, so that you cannot, for that reason, convict a person indicted for a forcible resistance thereto, if the facts alleged in the indictment are proved and the Court hold the statute to be constitutional?

JUROR. I think not.

MR. ASHMEAD. Let the juror be sworn.

The juror is sworn and takes his seat in the box.

David George is called and answers.

The juror affirms on his voir dire.

MR. LUDLOW. Have you any conscientious scruples upon the subject of capital punishment, so that you would not, because you conscientiously could not render a verdict of guilty, death being the punishment, though the evidence required such a verdict?

JUROR. I have.

MR. LUDLOW. Challenged for cause by the United States.

Jonathan Wainwright is called and answers.

The juror affirms on his voir dire.

MR. LUDLOW. Have you any conscientious scruples upon the subject of capital punishment, so that you would not, because you conscientiously could not render a verdict of guilty, death being the punishment, though the evidence required such a verdict?

JUROR. No, sir.

MR. LUDLOW. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. No, sir.

MR. LUDLOW. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror.

JUROR. No sir.

MR. LUDLOW. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. No, sir.

MR. LUDLOW. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment, constitutes treason or not?

JUROR. No, sir.

MR. LUDLOW. Have you formed an opinion that the law of the United States, known as the Fugitive Slave Law of 1850, is unconstitutional, so that you cannot for that reason, convict a person indicted for a forcible resistance thereto, if the facts alleged in the indictment are proved, and the Court hold the statute to be constitutional?

JUROR. No, sir.

JUDGE GRIER. Let the juror be sworn.

Juror is sworn and takes his seat in the box.

MR. READ. Does your honor understand that we have exhausted our peremptory challenges, and that we are not allowed to challenge? I ask the Court, merely to know the rule as to whether we have a right to challenge the jurors that have been set aside, or whether we have waived our right of peremptory challenge?

MR. ASHMEAD. That is the rule every where.

JUDGE GRIER. I will hear you on that question; I had supposed that having once exercised your right, you could not have it again; but I will not say so definitely, if you choose to argue the point; or show a precedent.

MR. LEWIS. I apprehend the rule is to the contrary. That is to say, the right to challenge is not exhausted until thirty-five are challenged.

JUDGE GRIER. You cannot have used that right and still retain it.

MR. G. L. ASHMEAD. I understand the defence distinctly said "*not challenged*" in the first place. That is enough.

JUDGE KANE. The Court would perhaps allow the challenge for cause, if there were some manifest prejudice, but under no other consideration.

JUDGE GRIER. I understand by calling him you choose to elect him as your juror, if not challenged for cause. Not having done so, as far as this juror is concerned, you have exercised your right.

Ephraim Fenton is called and answers.

The juror affirms on his voir dire.

MR. LUDLOW. Have you any conscientious scruples upon the subject of capital punishment so that you would not, because you conscientiously could not render a verdict of guilty, death being the punishment, though the evidence required such a verdict?

JUROR. I am opposed to capital punishment, but I think it would be my duty under the law and the charge of the Court.

MR. LUDLOW. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. No more than what I have formed from seeing the newspapers.

MR. LUDLOW. Are you sensible of any prejudice or bias therein, as may affect your action as a juror?

JUROR. No, sir.

MR. LUDLOW. Have you formed or expressed any opinion as to the guilt or innocence of the

accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

JUROR. No, sir.

MR. LUDLOW. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. I should of course take that from the Court.

MR. LUDLOW. Have you formed an opinion that the law of the United States, known as the Fugitive Slave Law of 1850, is unconstitutional, so that you cannot for that reason, convict a person indicted for a forcible resistance thereto, if the facts alleged in the indictment are proved and the Court hold the statute to be constitutional?

JUROR. I should take what is said by the Court as the law and be governed by it.

The juror is affirmed, and takes his seat in the box.

James Cowden is called and answers.

The juror is sworn on his voir dire.

MR. LUDLOW. Have you any conscientious scruples upon the subject of capital punishment, so that you would not, because you conscientiously could not render a verdict of guilty, death being the punishment, though the evidence required such a verdict?

JUROR. No, sir.

MR. LUDLOW. Have you formed or expressed any opinion relative to the matter now to be tried?

JUROR. I have not formed any opinion as to the merits of the case at all.

MR. LUDLOW. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

JUROR. I am not.

MR. LUDLOW. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged in the indictment?

JUROR. No, sir.

MR. LUDLOW. Have you heard anything of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

JUROR. I have read some examinations of the questions of what constitutes treason, but have not come to any conclusion or the subject with reference to this case.

MR. LUDLOW. Have you formed an opinion that the law of the United States, known as the Fugitive Slave Law of 1850, is unconstitutional, so that you cannot for that reason, convict a person indicted for a forcible resistance thereto, if the facts alleged in the indictment are proved and the Court hold the statute to be constitutional?

JUROR. No, sir.

MR. COOPER. We desire to put an additional question to the juror, so that he may explain himself with reference to his answer to the first question. He said, he says he has not made up his mind as to the merits of this particular case, and I desire to ask him the question whether he has made up or expressed an opinion in relation to the transaction generally at Christiana which took place there in September last?

JUROR. I can explain it very soon.

MR. COOPER. The object is to ascertain, as we have seen that the juror does not comprehend the question. We would put this merely to have an answer from the juror, whether he answered in reference to this transaction or to any other.

JUDGE GRIER. He can be asked.

JUROR. I only wished to avoid the generality of the question, as to the time it would take to try it. That is all I meant by the answer.

MR. ASHMEAD. I understand you to say, that upon this matter of law, you had formed no opinion, but that you would be willing to take the law upon that subject from the Court. Is that so?

JUROR. Yes, sir.

MR. ASHMEAD. Let the juror be sworn.

MR. COOPER. It being now very near the hour of adjournment, I would suggest the propriety of not swearing the juror last called, so that the panel being still incomplete, it may not be necessary to detain the jury in the charge of the officer, and they may be allowed, to separate and make their necessary arrangements before the opening ofthe Court on Friday morning, when I presume your honors willorder them into strict charge. I make this suggestion solely for the convenience of the gentlemen who have been impanneled; many of whom being at a distance from home, would find it extremely unpleasant, to be detained for a whole day, without having had some previous notice.

JUDGE GRIER. To-morrow being the day appointed by the Governor of this State, (and I believe of every one,) as a day of public thanksgiving, I wish as far as possible to show respect to the orders of the Governor; and as I presume the jurors themselves are desirous of participating in the proper exercises of that day, whatever they may be; and although I feel exceedingly pressed for time, and would like to be in another place, where I am very much wanted; considering I have no right from the importance of the case, to use any pressure here upon the parties, or counselors or jurors, (it being a case of such importance); and knowing that when the jurors are once committed to the custody of the officers, they must not be divided, you can separate for the purpose of letting the jurors have their rights to-morrow, which they could not do if they were compelled to keep together. If the case was committed to them, we should not adjourn for Thanksgiving day, and I have a little doubt whether we should for Sunday, if we judge from ancient precedents. I would counsel the jury, if you hear any thing concerning the law or facts in this case, to avoid any sort of disquisition, whether it comes from the East, South, North, or West. Persons might perhaps be found in every direction who are very willing to instruct you both as to the facts and law of this case. Formerly the *press* was disposed to wait until the Court had decided the case, and then they passed upon it afterwards; but it has got to be the principle in certain parts of the country that they

pass upon it first. I hope therefore that you will not pay any particular attention to anything further than the news of the day.

JUDGE KANE. I take the liberty of adding to the gentlemen of the jury that will constitute the panel, that arrangements have been made by the Marshal (in conjunction with the Court,) with the keeper of the American Hotel, (directly opposite,) and he has provided rooms for their accommodation. And it may be convenient for the jurors, before assembling on Friday morning, to remove their wardrobes to that place, where they will find rooms prepared for their accommodation.

JUDGE GRIER. All the jurors who have not been sworn on the present case, will be discharged until Monday week.

The Court then adjourned to meet on Friday, the 28th day of November, A. D., 1851, at 10 o'clock, A. M.

[The last juror was not sworn, for the purpose of avoiding the necessity of keeping the jury together, under the charge of the Marshal, until the meeting of the Court on Friday.]

The petit jury consists of the following gentlemen:

1. ROBERT ELLIOTT, Farmer, Ickesburg, Perry county.
2. JAMES WILSON, Gentleman, Fairfield Post-office, Adams county.
3. THOMAS CONNELLY, Carpenter, Beaver Meadow, Carbon county.
4. PETER MARTIN, Surveyor, Ephrata Post office, Lancaster county.
5. ROBERT SMITH, Gentleman, Gettysburg, Adams county.
6. WILLIAM R. SADDLER, Farmer, York Sulphur Springs, Post-office, Adams county.
7. JAMES M. HOPKINS, Farmer, Bucks Post-office, Dumore township, Lancaster county.
8. JOHN JUNKIN, Farmer, Landisburg, Perry county.
9. SOLOMON NEWMAN, Smith, Milford, Pike county.
10. JONATHAN WAINWRIGHT, Merchant, Philadelphia.
11. EPHRAIM FENTON, Farmer, Upper Dublin Post-office, Montgomery county.
12. JAMES COWDEN, Merchant, Columbia, Lancaster county.

Friday, November 28, 1851.

THE COURT OPENED AT 10 O'CLOCK, A. M.

PRESENT, JUDGES GRIER AND KANE.

MR. G. L. ASHMEAD. Will your Honors allow the Crier to call the witnesses for the U. S., so that I may be able to send for those who are absent?

Witnesses called.

JUDGE GRIER. The last juror called was not sworn.

James Cowden is called and answers.

The juror is then sworn, and takes his seat in the box.

Jurors empanelled answer to their names.

The United States' District Attorney, Mr. JOHN W. ASHMEAD, then opened the case for the prosecution, with the following remarks:

May it please the Court,—Gentlemen of the Jury—

It becomes my duty, as the officer charged by the law with the prosecution of crimes and offences committed against the laws of the United States within the Eastern District of Pennsylvania, to submit for your consideration the indictment upon which the prisoner at the bar has been arraigned, in order that you may determine upon the question of his guilt or innocence. It charges him with the commission of a crime of a highly aggravated character; in its nature, the most serious that can be perpetrated against a human government. It is technically called high treason, and is defined in the Constitution of the United States and the Act of Congress of 30th April, 1790. It consists in this country only in levying war against the United States, and in adhering to their enemies, by giving to them aid and comfort. The treason charged against the prisoner at the bar, is that of levying war against the United States, and I desire you distinctly to understand that it is not a case of constructive treason, but one of actual treason, and embraced within the purview of the Constitution and the Act of Congress to which allusion has been made. What the law is upon this subject I will fully explain before I conclude my opening remarks; but I now state that any combination or conspiracy by force and intimidation to prevent the execution of an Act of Congress, so as to render it inoperative and ineffective, is in legal estimation high treason, being an usurpation of the authority of government. This construction of the Constitution of the United States has been cotemporaneous with the adoption of that instrument, and every judge, whether state or federal, whose attention has been directed to the subject, has agreed in this interpretation. It was so held in the cases of the Western insurgents in 1795, in the cases of the Northampton insurgents in 1799, in the case of Aaron Burr in 1807, by Judge Story in his charge to the grand jury in 1842, by Judge King, President of the Court of Common Pleas of this county, in his charge to the grand jury, in 1846, and in 1851 by his Honor, Judge Kane, who reviewed the whole law upon this subject in a clear and conclusive opinion, which has been before the country since the 29th of September last.

The treason charged against the defendant is, that he wickedly devised and intended to disturb the peace and tranquillity of the United States, by preventing the execution of the laws within the same, to wit: a law of the United States, entitled "An Act respecting fugitives from justice, and persons escaping from the service of their masters, approved February 12, 1793," and also a law of the United States, entitled "An Act to amend, and supplementrry to the Act entitled 'An Act respecting fugitives from justice, and persons escaping from the service of their masters, approved February 12, 1793,' " which supplementary Act was approved the 18th of September, 1850, generally known as the Fugitive Slave Law. The overt acts, which may be considered as the evidence or manifestation of the manner in which

the treason was committed are set forth in the indictment as follows:—

First.—That on the 11th of September, 1851, in the County of Lancaster, and within the jurisdiction of this Court, the defendant, with a great number of persons, armed and arrayed in a warlike manner, with guns, swords and other weapons, assembled and traitorously combined to oppose and prevent by intimidation and violence, the execution of the laws of the United States already adverted to, and arrayed himself in a warlike manner against the said United States.

Second.—That at the same time and place, the said Castner Hanway assembled with others, with the avowed intention by force and intimidation to prevent the execution of the said laws to which I have alluded, and that in pursuance of this combination, he unlawfully and traitorously resisted and opposed Henry H. Kline, an officer duly appointed by Edward D. Ingraham, Esq., a Commissioner of the Circuit Court of the United States, from executing lawful process to him directed against certain persons charged before the Commissioner with being persons held to service or labor in the State of Maryland, owing such service and labor to a certain Edward Gorsuch, under the laws of the State of Maryland, who had escaped into the Eastern District of Pennsylvania.

Third.—That in further execution of his wicked design, the defendant assembled with certain persons who were armed and arrayed with the design, by means of intimidation and violence, to prevent the execution of the laws already alluded to, and being so assembled, knowingly and wilfully assaulted Henry H. Kline, the officer appointed by the Commissioner to execute his process, and then and there, against the will of the said Henry H. Kline, liberated and took out of his custody persons before that time arrested by him.

Fourth: That the defendant in pursuance of his traitorous combination and conspiracy to oppose and prevent the said laws of the United States from being carried into execution, conspired and agreed with others to oppose and prevent by force and intimidation, the execution of the said laws, and in the ways already described, did violently resist and oppose them

Fifth: That the defendant in pursuance of his combination to oppose and resist the said laws of the United States, prepared and composed divers books and pamphlets, and maliciously and traitorously distributed them, which books and pamphlets contained incitements and encouragements to induce and persuade persons held to service in any of the United States by the laws thereof, who had escaped into this district, as well as other persons, citizens of this district, to resist and oppose by violence and intimidation the execution of the said laws, and also containing instructions how, and upon what occasions the traitorous purposes should and ought to be carried into effect.

The overt acts which I have now described embrace all the charges which the government presents against this defendant. I need not say to you that they are altogether of an extraordinary character, and such as, in this country, are but seldom presented for the consideration of a court and jury. In monarchical governments, it is true, crimes of this description are of frequent occurrence, but in a government like ours they are but seldom committed. The tyranny to which the subjects of despotisms are exposed, may so burden and oppress them that longer submission becomes intolerable, and they are driven to efforts to shake it off. The failure to succeed involves them in the guilt of treason, and trial and conviction for the offence follow as a consequence. In governments so constituted, the only hope for a change exists in revolution, and hence the attempt made is to overturn the whole fabric of government. Under such circumstances, treason may become patriotism, and the friends of liberty throughout the world may ardently wish for its success. No such excuse, however, exists with us; for our institutions are based upon the inherent right of the people to change and modify their form of government. In the constitution of the United States, as well as in those of the several States, modes are provided by which their provisions can be altered. If obnoxious acts of Congress are passed they can be changed or repealed. Hence this defendant, if he has perpetrated the offence charged in the indictment, has raised his hand without excuse or palliation against the freest government on the face of the earth. He has not only set its laws at defiance, by seeking to overturn them, and to render them inoperative and void; but the conspiracy into which he entered, assumed a deeper and more malignant dye, from the wanton manner, in which it was actually consummated. I allude to the murder in which it resulted. An honorable and worthy citizen of a neighboring State, who entered our Commonwealth, under the protection of the constitution and laws of the Union, for the purpose of claiming his property under due process of law, was mercilessly beaten and murdered, in consequence of the acts of the defendant and his associates. It is a disgrace upon our national escutcheon; a blot upon the fair fame of Pennsylvania; and a reproach which nothing short of the conviction and punishment of the offenders can ever wipe out. It is for you, gentlemen of the jury, to judge of the evidence which the government will submit in this case; and I need not say to you, that if it proves the defendant to have been one of the actors in the bloody tragedy of Christiana, that you will find him guilty of the offence.

I desire, however, in the course of my remarks to say nothing which may be calculated in any way unnecessarily to inflame your minds against the defendant. I trust he may be able to convince you that he had no participation in the dreadful transactions of the 11th of September, and thus rescue his name from the obloquy and infamy which would otherwise attach to it. He has a right to demand a fair and impartial hearing at your hands, and a candid and dispassionate consideration of the testimony which he may produce. Nay, he is entitled to even more than this; for every reasonable doubt which may arise in the cause is to be resolved

in his favor. He is not to be required to establish his innocence, but it is for the prosecution to make out and prove his guilt. The Government of the United States does not ask any man's conviction on testimony which is uncertain in its nature, and not adequate to establish the facts for which it is adduced. On the other hand, we have a right to expect from you a fair and impartial discharge of public duty. A heavy responsibility rests upon you, and there is no way of evading its requirements. If it can be shown by competent and credible testimony that the defendant is guilty of the offence which is charged in the indictment, it is essential to the peace of the country that you should say so by your verdict. Justice requires it. and the obligation of your oaths demand it.

I need hardly say to you, that the outrage perpetrated at Christiana was, in my judgment, treason against the United States; and all who participated in it are guilty of that offence. It was a concerted and combined resistance, by force, of a statute of the United States, and was made with the declared intent, so far as the defendant Hanway was concerned, to render its provisions void, and to make the act altogether inoperative. The proof against him will be clear and convincing, and such as to satisfy every one of his guilt. The overt acts will be established by the testimony of more than two witnesses, in so pointed and distinct a manner that no question of their truth can exist.

In order that you may fully understand the character of the evidence which we propose to introduce, I will give you a brief narrative of the facts as they will be detailed by the witnesses.

On the 9th of September last, Edward D. Ingraham, Esq., Commissioner of the United States, issued four warrants, directed to Henry H. Kline, an officer appointed by him under the authority of the Act of 18th September, 1850, commanding him to apprehend Noah Buley, Nelson Ford, Joshua Hammond and George Hammond, who had been legally charged before the said Commissioner with being fugitives from labor, who had escaped from the State of Maryland into the State of Pennsylvania, and owed such service and labor to a certain Edward Gorsuch. The fact that the writs had been issued, became known to a colored man living in this city, named Samuel Williams, who preceded the officers to the neighborhood where the slaves resided, and where the arrests were to have been made, and gave notice that they were coming to execute them. On the 11th of September, Kline and his party, consisting of Edward Gorsuch, Dickerson Gorsuch, Joshua M. Gorsuch, Dr. Thomas Pierce, Nicholas Hutchings and Nathan Nelson, proceeded to Christiana, Lancaster County, and on arriving there, started for Parker's house, a place about three miles distant from the railroad depot on the Columbia road, which they reached about daylight in the morning. While proceeding along the road, and across the fields, their attention was arrested by the sound of horns, and the blowing of a bugle. After watching about Parker's house for a short time, one or two negroes were seen coming out of it. On discovering Kline and his party they fled back into the house, and on pursuit being made by him, they ran up stairs. These negroes were recognized by Edward Gorsuch, and known to be his slaves. Kline entered the house, and almost immediately ascertained that a large number of negroes were concealed in the upper part of it; he nevertheless went to the stairway and called the keeper of the house to come down, stating that he was desirous of speaking to him. The negroes at this time were heard loading their guns. Kline hearing the noise, said to them that there was no occasion for arming themselves,—that he designed to harm no one, but meant to arrest two men who were in the house, and for whom he had warrants. Some one replied they would not come down. Edward Gorsuch then went himself to the stairway, called his slaves by name, and stated that if they would come down and return home he would treat them kindly and forgive the past. Kline then read the warrants three times, and afterwards attempted to go up stairs, when a sharp pointed instrument was thrust at him, and an axe afterwards thrown down which struck two of the party below. Edward Gorsuch then went to the front door of the house, and looking up to the window, again called to his slaves by name, when a shot was fired at him from the window. In order to intimidate the blacks, Kline fired his pistol. At this period a horn was blown in the house which was answered by other horns from the outside, as if by pre-concerted action. The negroes then asked fifteen minutes time for consideration, which was granted to them. At this moment a white man was seen approaching the house on horseback. It turned out to be Castner Hanway, the present defendant. Kline immediatly walked towards him and inquired if he resided in the neighborhood. His answer was short and rude: "It is none of your business." Kline replied by letting him know he was a Deputy Marshal of the United States, gave him the warrants to read, and called upon him in the name of the United States to assist in making the arrests. Hanway replied "he would not assist—that he did not care for that act of Congress or any other act,—that the negroes had rights and could defend themselves, and that he need not come there to make arrests, for he could not do it." By this time another white man had arrived on the ground, (Elijah Lewis,) who walked up to Kline, and asked him for his authority to be there. Kline showed his papers to him also. Lewis then read the warrants, passed them to Hanway, who returned them to the Marshal. Lewis, after reading the warrants, said "the negroes had a right to defend themselves." Kline then called upon him to assist him in making the arrests, when he refused, and would not even tell his name. Kline then asked Hanway where his residence was; he replied "you must find that out the best way you can." Kline then explained to them what his views of the act of Congress of 1850 were, and informed that through their agency these slaves would escape. By this time the blacks had gathered in very large numbers around the house, armed with guns, which they commenced pointing towards

the Marshal. At this juncture, Kline implored Hanway and Lewis to keep the negroes from firing, and he would withdraw his men, leave the ground, and let the negroes go. Hanway instantly replied, "they had a right to defend themselves, and he would not interfere." Kline's answer was, "they were not good citizens, or they never would permit the laws to be set at defiance in this way." Dr. Pearce then remarked "that all they wanted was their property, and that they did not wish to hurt a hair of any one's head" Lewis replied "that negroes were not property," and then walked away. By this time another gang of negroes had arrived, armed with guns and clubs, and Hanway rode up to them and said something in a low tone of voice. He moved his horse out of the way of the guns; the negroes shouted, and immediately fired from every direction. Hanway rode a short distance down the lane leading from Parker's house, and sat on his horse watching the blacks. Kline then called to Lewis, telling him a man was shot, and begging him to come and assist, which Lewis refused to do. This conversation took place at the bars on the short lane, which will be shown to you upon the plan we purpose giving in evidence. While this conversation was going on, and just before the firing commenced, Edward Gorsuch was standing in the short lane, about half way between the bars and the house. Joshua M. Gorsuch was standing near him; Dickinson Gorsuch was in the short lane, not so near his father as was Joshua, and Dr. Pearce; Mr. Hutchings and Mr. Nelson were somewhere near the same spot. The number of negroes assembled at this time must have exceeded one hundred. Before the firing commenced, Edward Gorsuch was struck with a club on the back part of the head, and fell forward on his hands and knees. As he was struggling to rise, and in the act of getting upon his feet, he was shot down, and when prostrate on the ground, was cut on the head with a corn cutter, and beaten with clubs. Dickinson Gorsuch, on perceiving the attack made upon his father, immediately rushed to his assistance, when his revolver was knocked out of his hand, and he himself shot in various parts of the body, producing intense agony, and rendering him utterly helpless. Joshua M. Gorsuch was attacked at the same time, and defended himself with his revolver, which he twice snapped at his assailants, but the powder being wet it would not go off. He was also struck down and cruelly beaten and maltreated. When the firing commenced, Kline, in order to avoid its effects, escaped into a corn field, but on seeing Dickinson Gorsuch struggling in the short lane apparently wounded and bleeding, at the risk of his own life he went to his assistance, and placed him under the shelter of a tree until aid could be procured. Hutchings and Nelson, two of the others, were at this time making their escape, the negroes being in full pursuit. Dr. Pearce and Joshua Gorsuch retreated by the short lane, and a number of shots were fired at them as they moved off. Dr. Pearce was shot in the wrist, side and shoulder, and a ball also passed through his hat just above his forehead. In the effort to escape, these latter gentlemen rushed towards Hanway, who was still sitting on his horse in the long lane. They besought him to prevent the negroes from pursuing farther. He said he could not. They then asked for permission to get upon his horse, which would afford the means of making their escape. He refused their request, and putting whip to his horse rode off at full speed. This mode of a safe retreat being denied to Dr. Pearce and Joshua Gorsuch, their only hope was in continuing to run. Pearce was in front, and Joshua Gorsuch behind. In looking back, Dr. Pearce saw a negro who had previously fired at him, strike Joshua Gorsuch with a gun, which felled him to the earth, and only escaped himself by rushing into a neighboring farm-house, where he was concealed from view. Joshua M. Gorsuch and Dickinson Gorsuch were subsequently carried to houses in the vicinity, and were a long time recovering from their wounds. In connection with this narrative of facts, I will also state that there are two or three other matters which will appear in the course of the testimony to which I shall call your attention.

First—That so soon as Hanway appeared at the bars, the negroes in Parker's house appeared evidently to be encouraged, and gave a shout of satisfaction; when before that they had appeared discouraged, and had asked for time.

Second—That before the firing commenced, Kline had given orders to his party to retreat, and they were actually engaged in the retreat when the attack was made.

Third—That Edward Gorsuch, who was killed, had no weapon of any kind in his hands, and was therefore cruelly, wantonly and unnecessarily wounded by the defendant and his associates, while carrying out their combination and conspiracy to resist, oppose and render inoperative and void the acts of Congress referred to in the indictment.

Such, Gentlemen of the Jury, is the general outline of the facts, which I propose laying before you, in order to sustain the accusations contained in the indictment. The details of the testimony, as you will receive it from the witnesses, will fully complete this sketch. If the result of the investigation exhibits the state of facts which I anticipate, it will be contended on behalf of the United States, that the crime of High Treason has been established against the defendant; and that you, faithfully, honestly, and fearlessly responding to the obligations of your oaths, will say so by your verdict.

Treason against the United States, as defined by the Third Section of the Third Article of the National Constitution, consists in levying war against them, or in adhering to their enemies, giving them aid and comfort. The crime charged against this defendant, is that embraced under the first of these subdivisions, viz.: that of *levying war against the United States*. The phrase, levying war, was long before the adoption of the Constitution, a phrase of well-known legal signification, embracing such a forcible resistance to the laws, as that charged against this defendant. Since the adoption of the Constitution, it

has received a similar construction from the Federal Judiciary, and may now be considered as a settled principle of the criminal code of the United States. The judicial decisions upon which this position is predicated, will be submitted to the Court and yourselves, in the course of this address, in that which I regard as its appropriate place.

The Act of Congress, which the defendant is charged to have forcibly, violently, and treasonably resisted, is an Act, approved on the 18th of September, 1850, entitled: "An Act to amend, and supplementary to the Act entitled: 'An Act respecting fugitives from justice, and persons escaping from the service of their masters, approved February 12th, 1793.'" The original Act of 1793, and the supplement of 1850, are based on the provision of the Second Section of the 4th Article of the Constitution of the United States, and are intended to carry into full and faithful execution, the clear, positive, and unequivocal injunctions of that instrument. The Section which I allude to, declares that "No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party, to whom such service or labor may be due." It is almost needless to say, that without this provision, the Constitution of the United States never could have been adopted; the existing National Union never could have been formed, and the powerful, prosperous, and glorious Republic of the United States, never could have existed among the nations of the earth. Of the value of this Union, not only to us as a separate people, but to the common family of mankind, I admit my utter inadequacy to form an estimate, regarding it as one of those great blessings of Divine Providence, which human intellect cannot fathom; and which increases in appreciation with the progressive development of its benefits.

The Constitution of the United States you are aware, was adopted by a convention of the people of the States, on the 17th of September, 1787. At the second session of the Second Congress, held under that Instrument, viz.: on the 12th day of February, 1793, was passed, the "Act respecting fugitives from justice, and persons escaping from the service of their masters." Its provisions were plain, simple, and clear; manifesting on the part of its framers; many of whom had been members of the National Convention, which had previously framed the Constitution, a frank, honest, and sincere disposition to carry into effect, a constitutional injunction, which most probably, was unpalatable to some of them. The law is sufficiently brief to justify my reading a portion of it. The third and fourth sections of it are as follows:—

Sec. 3. That when a person held to labor in any of the United States, or in either of the territories on the North West or South of the river Ohio, under the laws thereof, shall escape into any other of the said States or territory, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any Judge of the Circuit or District Courts of the United States, residing or being within the State, or before any magistrate of a county, city, or town corporate, wherein such seizure or arrest shall be made, and upon proof, to the satisfaction of such Judge or Magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such State or territory, that the person so seized or arrested, doth, under the laws of the State or territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such Judge or Magistrate to give a certificate therof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor, to the State or territory from which he or she fled.

Sec. 4. That any person who shall, knowingly and willingly, obstruct or hinder such claimant, his agent or attorney, in so seizing, or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent, or attorney when so arrested pursuant to the authority herein given or declared; or shall harbor or conceal such person after notice, that he or she was a fugitive from labor, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of Five Hundred Dollars, which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try the same; saving, moreover, to the person claiming such labor or service, his right of action for, or on account of the said injuries, or either of them.

For a series of years after its passage, this law was quietly executed, according to its spirit and letter: neither State Legislatures, nor State Judiciaries throwing any obstructions in its way. On the exciting topic of domestic slavery, peace reigned within our borders. In such of the States, as deemed this institution incompatible with their interest, or where it was repugnant to the popular feeling, it was abolished cautiously, prudently, and progressively. But everywhere, the solemn obligations of the Constitution, to surrender the absconding slave to his rightful claimant was admitted, respected, and complied with. Men had not then become wiser than the laws, nor had they learned to measure the plain and unambiguous letter of the Constitution, by an artificial standard of their own creation; and to obey or disregard it according as it came up to, or fell beneath it. A change, however, came o'er the spirit of a portion of the people of some of the States. This change of sentiment soon manifested itself in the enactments of State Legislatures, and in the decisions of State Judiciaries consequent upon them, which created such embarrassments and difficulties in the execution of the Act of 1793, as to render it, practically speaking, a dead letter in some of the States. I do not propose to enter into any detailed history of this legislation, or of these adjudications. That would be alike fatiguing to you, and of little value in the consideration of the matter in hand. I will, however, refer

to the legislation of our own Commonwealth, which though generally characterized by fidelity to the National compact, still shows that this new influence, to a certain extent, had even affected her usually steadfast and solid character. On the 26th of March, 1826, the Legislature of Pennsylvania, passed an Act, entitled, "An Act to give effect to the provisions of the Constitution of the United States, relative to fugitives from labor, for the protection of free people of color, and to prevent kidnapping.'

This Statute purporting to be intended to give effect to the provisions of the Constitution, relative to fugitives from labor, deprived all the Aldermen and Justices of the peace of power to hear and decide upon the cases of such fugitives, confining their authority to the issuing of warrants for the arrest of such fugitives, which warrants were however, to be made returnable before, and the complaint to be heard by a Judge of the proper county. The Ninth Section of the Act declaring that no Alderman or Justice of the Peace should take cognizance of the case of any fugitive from labor from any of the United States, under the Act of 1793, and forbidding them to grant any certificate or warrant of removal of such fugitive upon the application, affidavit or testimony of any person or persons whatsoever, under the said Act of Congress, or any other law, authority or Act of the Congress of the United States, under penalty of being guilty of a misdemeanor in office, and of incurring a fine of not less than Five Hundred, nor exceeding One Thousand Dollars. This Act, however, authorized the Judge, before whom an alleged fugitive was brought, to take bail for his appearance until final hearing, or in default thereof to commit him to the common jail of the County for safe keeping, at the expense of the owner.

This law was followed by the Act of the 3d of March, 1847, the third section of which absolutely forbids any judge of the Commonwealth from taking cognizance of the case of any fugitive from labor from any of the United States, under the Act of 1793. The sixth section even declares that "it shall not be lawful to use any jail or prison of the Commonwealth for the detention of any person claimed as a fugitive from servitude," and subjects any jailor or prison-keeper offending against its provisions, to a heavy pecuniary fine, and to a disqualification for life from holding such office or trust.

The effect of the first of these Acts was to render futile so much of the Act of Congress of the 12th of February, 1793, as imparted jurisdiction in the cases of fugitives from labor to State aldermen and justices of the peace, thus depriving the claimant of a convenient and accessible tribunal, before which he could bring his arrested fugitive servant; and referring him to the county judges. These officers, in many instances, were only to be found at remote distances from the place of arrest, and during a large portion of their time were actually engaged in other public business which necessarily hindered them from giving the prompt attention to such cases, which their nature demanded. The necessity of carrying an arrested fugitive for long distances, through populations sometimes strongly prejudiced against the institution of slavery, rendered arrests hazardous, sometimes, indeed, subjecting claimants to personal dangers, which prudent men were not willing to encounter, even in the pursuit of their rights. But still the Act of 1825 left a local State tribunal in every county, though an inconvenient one, to which a claimant under the Act of 1793 could apply. But the Act of 1847, took that away from him by forbidding the State judiciary to take cognizance of the case of a fugitive from labor under the Act of 1793. And the use of the county prison was refused for the detention of any person claimed as such a fugitive.

What was the actual state of things produced by the operation of these laws? None but a judge of the United States could aid the claimant of a fugitive from labor, and that judge could not commit such fugitive to any county prison for safe keeping, pending an investigation before him. At that time the United States had three judges in this State, having jurisdiction in cases of fugitives from labor. The Judge of the Eastern District, residing in Philadelphia; the judge of the Western District, residing at Pittsburgh, and the Circuit Judge, whose time was divided by the Circuit Courts held in Philadelphia, Trenton, (New Jersey,) Williamsport and Pittsburgh.

And these Judges, located at such remote points, had no means given them to secure a person charged as a fugitive from labor, even in the rare instances in which they could be brought before them.

In this state of things, the arrest of a fugitive from labor in Pennsylvania, became, practically speaking, an impossibility. Or, certainly, in nine cases out of ten, the promises of the Constitution and the laws to the claimant of a fugitive from labor, became the merest delusion.

In other States of the Union, laws of an equally urgent and embarrassing character prevailed; until the provision of the Constitution respecting fugitives from labour, and the laws passed to carry it into execution had almost reached the point of absolute nullity. And this great nation found itself in the position of those weak and feeble governments in which there exist

"laws for all faults;
But faults so count'nanc'd, that the strong statutes
Stand like the forfeits in a barber's shop,
As much in mock as mart."

Under such a state of things what was justly to be expected from those States which had entered into the National Compact, under the solemn guarantees and pledges of the Constitution? Deep feelings, intense excitements arising from wounded sensibility, mortified pride, and great personal interests believed to be placed in jeopardy. Of this state of public feeling, in some instances it is to be feared bad and designing men sought to take the advantage, until in the fierceness of the conflict that arose, our noble Union seemed to rock on its foundation. But the saving Spirit, which has ever guided our national destinies, rose bright and glorious above

the storm; pointing out to anxious patriotism the haven of peace, concord and union, in the adoption of the Compromises of the ever-to-be-remembered Session of 1850. Among these is to be found, the Act of the 18th of September, 1850, the law, the execution of which this defendant is charged in combination and by preconcert with others, to have resisted even unto blood and death. This Act, which has been so much commented upon, is in fact less urgent in its features, and better calculated to prevent abuses, than the original Act of February, 1793, of which it purports to be an amendment. By the Act of 1793, *any* Magistrate of *any County, City, or Town corporate*, wherein an alleged fugitive from labor may have been arrested, is authorised to take jurisdiction of the complaint, and grant the required certificate for his removal to the State or Territory from which he has fled. In lieu of this almost universal magistracy, from which the claimant might have made his choice under the Act of 1793, he must under the Act of 1850 make his application to a Judge of the Circuit or District Courts of the United States, or to a Commissioner appointed by the Circuit Court:—an officer directly responsible to the Judge of the Circuit Court of the United States, by whom he is appointed, and whose duty it is to see that the high trust reposed by him in such Commissioner is faithfully, wisely, and humanely executed. This removes one of the objections made to the Act of 1793, which was, that it gave the complainant the choice of the Magistrate, to whom he might apply, and thus gave room to the choice of one whose prejudices or interests might be operated upon, to the disadvantage of the alleged fugitive. The process under the law of 1793, when process preceded the arrest of an alleged fugitive, might be executed by any peace officer selected by the claimant: while under the Act of 1850, it must be either executed by the Marshal or his deputy, or by a proper person designated by the Commissioner issuing the process; who is in this, as in all other parts of the execution of his office, immediately responsible to the Judge of the Supreme Court of the United States, by whom he is chosen. The high, dignified and responsible public station occupied by a Judge of the Supreme National Tribunal, affords a safe guarantee that no trust reposed by him in a subordinate, shall be abused without the certainty of prompt redress. And who can doubt that if a Commissioner should abuse his power, in the selection of the agent designated by him to execute his process, the Judge from whom he derived his functions would promptly deprive him of them.

The Act of 1793, like that of 1850, authorized the original arrest of the fugitive without warrant. In this feature the laws are the same. The media of proof under the two Acts are also identical. They may be either oral testimony delivered to the judge or magistrate hearing the cause, or affidavits taken and certified by a magistrate from the State or Territory from whence the alleged fugitive is said to have fled. The conclusiveness of the certificate of removal is equal under the two laws. Under the Act of 1850, it is declared so in terms. Under the Act of 1793, it was the same in effect, the Supreme Court of this State having so held, in cases in which attempts have been made to go behind the certificate of removal after it had been granted. If the laws of 1793 and 1850 are substantially identical, whence is it that the latter has been so assaulted? And why has the effort been so industriously prosecuted to convince the people of the United States, that some new and terrible anomaly has been introduced into the National Legislation by the Act of 1850? The answer to this inquiry is alike simple and conclusive. The Act of 1793 professed to give a remedy, but afforded no adequate means of enforcing it, independent of the aid of the local State magistracy. State legislation, by interdicting the action of the local State magistracy in its execution, deprived the law of vital power, made it the noisy thunder which stuns and confuses, while it deprived it of the lightning which strikes and penetrates. So long as the Act of 1793 was suffered to sleep in the Statute Book in lifeless inactivity, all was well with those who were willing

> "To keep the word of promise to the ear
> And break it to the hope."

But when the Act of 1850 imparted life to its torpid antecedent, by giving it a sanction by which its promises could be enforced and realized, then burst forth the clamors against the law, which have so long filled the public ear. Remedial laws, without corresponding sanctions, by which their proposed remedies may be obtained, are, at best, legislative cheats. Honest legislation never professes to afford a remedy, without furnishing the means necessary and proper to attain it.

To furnish such means of arriving at Constitutional rights, was the end and object of the Act of 1850, to which the Act of 1793 had become inadequate, by reason of counteracting State legislation. This, and no more, is the head and front of the offending of the calumniated law. It was against the execution of *this* law, that the defendant arrayed himself by combination, confederacy and preconcert with others, who are hereafter to answer for their participation in the crime. It was in opposition to the execution of *this* law, that he associated himself with others equally reckless; armed with the weapons of blood and death. It was with this object and by this association, that the blood of an unoffending American citizen, entering into our Commonwealth in pursuit of his legal rights, and acting under the sanction of the laws of the Union, has been shed. Shall this deed of blood and horror escape unpunished? Shall its repetition be invited by the impunity which shall follow the offender? The response to these questions must come from the Jury Box. *There* rests its terrible responsibility. If this response shall be in the affirmative, then a dark and heavy cloud will have passed over the sun-light of the American Union. For when the laws of the Union, enacted in pursuance of the Constitution and responsive to its most direct obligations,

cannot be enforced in its Judicial Tribunals, then, indeed, is the beginning of the end arrived.

The subject which remains for me to consider is, whether the facts which I expect to prove, amount to such a forcible resistance of the public law, as makes the actors in it guilty of Treason, in levying war against the United States. I propose now to consider this question, and with that view, invite your attention, as well as that of the Court, to a consideration of the law of the case. I need not say that you will receive the law from the Court, and that you are bound by the instructions which the Court may give in respect to it. In this particular, there is no difference between civil and criminal causes. It is, therefore, in no sense true, that you are judges of the law; and you must take the interpretation which the Court puts upon it. You have a right to apply the law to the facts, but you have no right to go further. What then is the law? I have stated that treason against the laws of the United States consists, according to the Constitution, only in levying war against the United States, and giving to their enemies aid and comfort. What is meant by levying war against the United States, I proceed now to consider. It is a phrase, the meaning of which is well settled and understood, both in England and the United States. The Statute of 25th Edward III., chap. 2, contains seven decriptions of treason, and two of them are thus stated by Blackstone:

1st. If a man do levy war against our Lord the King in his realm.

2d. If a man adhere unto the King's enemies in his realm, giving to them aid and comfort in the realm or elsewhere.

These are the two kinds of treason which are defined in the Constitution of the United States, and the words used to describe them are borrowed from the English Statute, and had a well-known legal signification at the time they were used by the framers of the Federal Constitution. This is expressly stated by Chief Justice Marshall, 2 Burr's trial, 401, his language being that "It is reasonable to suppose the term *levying war* is used in that instrument in the same sense in which it is understood in the English law to have been used in the Statute of 25 Edward III." He then adds, "that principles laid down by such writers as Coke, Foster and Blackstone, are not lightly to be rejected." He then defines at page 408 in what levying war consists; viz. "That where a body of men are assembled for the purpose of making war against the Government, and are in a condition to make war, the assemblage is an act of levying war." Coke, Foster, and the other English elementary writers clearly maintain the doctrine that any resistance to an Act of Parliament by combination and force, to render it inoperative and ineffective, is treason by levying war; and the American authorities adopt the English doctrine. In the cases of the Western Insurgents, 2 Dallas, 345, 347, 355, also reported in Wharton's State Trials, 182, Judge PATTERSON says, "If the object of the insurrection was to suppress the Excise office, *and to prevent the execution of an Act of Congress by force and intimidation*, the offence in legal estimation is high treason; it is an usurpation of the authority of the Government. It is high treason by levying war." Judge IREDELL, in the cases of the Northampton Insurgents, in his charge to the Grand Jury says, "I am warranted in saying, that if in the cases of the insurgents who may come under your consideration, the intention was to prevent by force the execution of an Act of Congress of the United States altogether, any forcible opposition calculated to carry that intimidation into effect, was a levying of war against the United States, and of course an act of treason. But if its intention was merely to defeat its operation in a *particular instance*, or through the agency of a particular officer, from some private or personal motive, though a high offence may have been committed, it did not amount to the crime of treason. *The particular motive, must however, be the sole ingredient* in the case, for if committed *with a general view to obstruct the execution of the Act*, the offence must be deemed treason." In *Fries' case*, Wharton's State Trials, 534, Judge PETERS, in his charge to the Grand Jury says, "It is treason in levying war against the United States for persons who have none but a common interest with their fellow-citizens, to oppose or prevent by force, numbers, or intimidation, a public and general law of the United States, with intent to prevent its operation, or compel its repeal." Again, "although but one law be immediately assailed, the treasonable design is completed, and the generality of the intent designated by a part assuming the government of the whole. Though punishments are designated by particular laws for certain inferior crimes, which if prosecuted as substantive offences, and the sole object of the prosecution, are exclusively liable to the penalties directed by those laws, *yet when committed with treasonable ingredients*, these crimes become only circumstances or overt acts. The intent is the gist of the offence in treason." Judge IREDELL, in *Fries' case*, immediately follows Judge PETERS; and referring to the law laid down by Judges PATTERSON and PETERS in the Western Insurgents, (2 Dallas R. 355,) says, "As I do not differ from that decision, my opinion is that the same declarations should be made upon the points of law at this time." Judge CHASE on the second trial of Fries, was on the bench, and in an elaborate opinion he maintains the doctrine which had been ruled in the previous cases. Judge STORY, in his charge to the Grand Jury, delivered June 15, 1842, (1 Story's Rep., 614,) says, "It is not necessary that it should be a direct and positive intention entirely to overthrow the Government. It will be equally treason if the intention is by *force to prevent the execution of any one or more of the general laws of the United States*, or to resist the exercise of any legitimate authority of the Government in its sovereign capacity. Thus, if there is an assembly of persons, with force with intent to prevent the collection of taxes lawful, or duties levied by the government, or to destroy all custom houses, or to resist the administration of justice in the United States, and they proceed to execute their purpose by force, there can be

no doubt it would be treason against the United States." Judge KING, in his charge to the Grand Jury, on the occasion of the Kensington riots, holds the same doctrine. His language is, "that where the object of a riotous assembly is to prevent, by force and violence, the execution of any statute, or by force and violence to compel its repeal by the legislative authority, or to deprive any class of the community of the protection afforded by law, as burning down all churches or meeting-houses of a particular sect, under color of reforming a public grievance, or to release all prisoners in the public jails and the like, and the rioters proceed to execute by force their predetermined objects and intents, they are guilty of high treason in levying war." To the same effect is the charge of the District Judge, (Hon. JOHN K. KANE,) delivered to the Grand Jury on the 29th of September last. He says, "the expression levying war embraces not merely the act of formal or declared war, but any combination forcibly to prevent or oppose the execution or enforcement of a provision of the Constitution, or of a public statute, if accompanied or followed by an act of forcible opposition in pursuance of such combination."

The authorities and opinions which I have quoted, are conclusive on the question of law, and prove that the forcible resistance to the execution of the law of the United States, known as the Fugitive Slave law of 1850, which took place at Christiana on the 11th of September last, in which the defendant participated, with others, if designed to render its provisions inoperative and void, was treason against the United States. It was a levying of war within the meaning of the Constitution. The intent with which the act was committed, is the essential ingredient in the offence. If it was not levelled at the statute, but simply designed to prevent the arrest of the slaves belonging to the late Mr. Gorsuch, it amounted, so far as the United States is concerned, to nothing more than a high misdemeanor. The death which resulted from the violence, in this aspect of the case, would be indictable and punishable as murder by the laws of Pennsylvania, but could not be considered an act of treason. It is your peculiar province to pass upon the question of *intent*, and you have a right to infer treasonable designs from the facts and circumstances which attended the transaction. The combination or conspiracy of the defendant with others, forcibly to resist the law at Christiana, can be established without direct proof. "The concert of purpose," says his honor Judge KANE, "may be adduced from the concerted action itself, or it may be inferred from facts occurring at the time or afterwards, as well as before." In this particular case, however, there is no necessity for inferential proof, so far as this defendant is concerned. His resistance to the law was open and declared. He avowed his determination on the spot, not to regard the provisions of the Fugitive Slave Law of 1850, or any other Act of Congress upon that subject, and the very presence of an armed band of negroes, in who had come together to resist the law, he declared that its supremecy should not be maintained by him, and that the rights of these insurgents were superior to any statute of the United States. "They are armed," was his language, "and can defend themselves."

It is manifest therefore, that Castner Hanway, so far as in him lay, had resolved to prevent the execution of these fugitive slave laws in every instance, and to make them a dead letter in the neighborhood and county in which he resided, so far as any ability or influence of his, could contribute to that end. His conduct and language towards Kline, incited and encouraged all that followed afterwards, and the prisoner is legally and morally responsible for it all. Had he chosen to discountenance this flagrant violation of law, and held the excited and infuriated blacks in check, the reputation of Pennsylvania never would have been tarnished by the disgraceful occurrences of Christiana, and a worthy and respected citizen of an adjoining state would not have been wantonly and wickedly murdered in cold blood, while engaged in the assertion of his legal rights. On Castner Hanway especially rests the guilt of the innocent blood which was spilt on that occasion. He may finally escape its consequences before this jury, because of some flaw or defect in our proof, but he never can flee from the reproaches of his own conscience, or the condemnation which every honorable and upright citizen will pronounce upon his conduct. He is, however, in your hands, and I will say nothing that is in any way calculated to create or array prejudices against him or his case.

I have thus, Gentlemen of the Jury, in the execution of my duties as opening counsel for the United States, detailed the facts of the cause you are about to try, as I believe they will be established by the evidence; and have also explained the legal principles which I consider applicable to them. My duties in this respect are therefore fulfilled. Your graver and more solemn one is about to commence. Never were duties more intensely interesting in their character, or more absorbingly important in their results. The simple fact, that the issue you are about to determine, involves the life of a human being, imparts to it an absorbing interest, and demands what I am satisfied it will receive, your anxious, scrupulous, and careful attention.

But the inherent gravity of such an issue assumes even a deeper responsibility, from the nature of the accusation involved in it, and from the influence your verdict may have on the future harmony and permanence of the National Union. It may be that the great political problem is now to be solved by you, whether the Constitution of the United States, and every part of it, is to be recognised and regarded throughout this land as the Supreme Law: whether its unequivocal mandates are to be evaded and disregarded, or whether they are to be obeyed, in that spirit of honesty and sincerity, so necessary to its perpetuity, and so essential to its effective action as the guardian of the rights of each individual citizen, as well of the sovereign States composing the American Union. With you the deep trust may be safely reposed. This venerated hall from

which the Declaration of American Independence was first proclaimed to an admiring world, never can be the scene of the violation of the Constitution, the noblest product of that Independence. For my own part, I enter into this investigation with the most absolute and abiding confidence in the jury box. The experience of my life has convinced me of the intelligence, patriotism, and honesty of American juries. I have ever found them thoroughly imbued with the belief, that in them was essentially reposed the administration of the public law. Without fidelity and intelligence in the jury box, the wisdom of the lawgiver would be fruitless and unavailing.

All I ask of you, Gentlemen, is what I know you will readily award me,—a verdict according to law and the evidence in the cause. Although your duties are solemn, they are simple, when confined within their legitimate limits. You are not called to determine upon the policy or impolicy of a public law. That belongs to another branch of the Government, selected by the people for that purpose, and directly responsible to them for their acts. To you rightly belongs the determination of the question, whether the public laws have or have not been infracted. If the evidence, therefore, brings home to this prisoner the crime charged against him in the indictment, faithful to the oaths you have taken, faithful to your duties as citizens, faithful to your high trust as jurors, you will so pronounce the verdict without other hesitation than that cautious consideration demanded in the execution of great and responsible duties. Of course, if the proofs are inadequate, you will as unhesitatingly acquit the prisoner. The Government of the United States simply asks that the public laws shall be faithfully executed. It seeks not victims; it demands not innocent blood. But it does ask, that the blood of an unoffending citizen shall not be shed with impunity on the soil of Pennsylvania, and under the shelter of the laws of the Union; that those laws shall not remain a lifeless letter on the Statute Book, but be vindicated and maintained, and that the promises of the Constitution shall be kept with every member of the confederacy, in the spirit and in the truth, with which that instrument came to us from the great Fathers of the Revolution.

MR. Z. COLLINS LEE, of Baltimore, U. S. District Attorney, appeared for the prosecution on the part of the State of Maryland.

MR. G. L. ASHMEAD. I shall now proceed to offer evidence on the part of the United States in this cause. I offer now, may it please the Court, the record of this Court, entitled, "The Minutes of the Circuit Court from May Sessions 1844, to October Sessions 1847.'

JUDGE GRIER. What is the purpose of your offer?

Mr. G. L. ASHMEAD. To prove the appointment of Edward D. Ingraham as a Commissioner under the Act of Congress, on the 6th of October, 1845. The entry is as follows: "Monday, 6th October, 1845. The Circuit Court is opened, E. D. Ingraham appointed Commissioner, &c."

JUDGE GRIER. Are there any objections?

MR. READ. No, sir, I believe not.

JUDGE GRIER. Very well, this is in evidence.

Edward D. Ingraham called and sworn.

MR. G. L. ASHMEAD. As Commissioner appointed by this Court, did you issue that deputation to Henry H. Kline? (the paper is handed to the witness.)

WITNESS. Yes, sir.

MR. G. L. ASHMEAD. I propose to read that

MR. CUYLER. Let it go in for what it is worth.

Mr G. L. Ashmead reads it.

MR. G. L. ASHMEAD. Will you be good enough to say whether as Commissioner you also issued these warrants? (warrants handed to witness.)

WITNESS. Yes, sir.

MR. G. L. ASHMEAD. I propose to read these warrants in evidence. I will read one which will be a specimen of the whole. The first is as follows.

UNITED STATES OF AMERICA.

Eastern District of Pennsylvania, ss.

Edward D. Ingraham, a Commissioner under the Act of Congress of the 20th February, 1812, duly appointed by the Circuit Court of the United States, for the Eastern District of Pennsylvania, in the Third Circuit:—

To the Marshal and Deputy Marshals of the United States for the Eastern District of Pennsylvania, and to Henry H. Kline, by me appointed to execute warrants and other process, issued by me in the performance of my duties as Commissioner.

WHEREAS, It has been legally charged before me that Noah Buley, a mulatto, being a person held to Service or Labor in the State of Maryland, and owing such Service or Labor to a certain Edward Gorsuch of Baltimore county, in the State of Maryland, under the laws of the said State of Maryland, hath escaped therefrom into the Eastern District of Pennsylvania: NOW, In pursuance of the Acts of Congress of the United States, in this behalf made and provided, and by force of the authority vested in me as Commissioner, I DO by this warrant empower and command you, that you apprehend the said Noah Buley, if he be found within this District, and that you cause him to be brought forthwith before me.

GIVEN under my hand and seal, at Philadelphia, in the County of Philadelphia, this Ninth day of September, A. D., 1851.

EDWD. D. INGRAHAM, [L. S]
Commissioner.

The second is a warrant of the same date and purport, to the same person, to arrest Nelson Ford.

The third is a warrant of the same date and purport, to arrest Joshua Hammond.

The fourth is a warrant of the same date and purport, to arrest George Hammond; all of them being alleged to be slaves of Edward Gorsuch of Maryland, and fugitives from his service.

Thomas S. Stewart is called but does not answer.

MR. G. L. ASHMEAD. He has been directed to be here half a dozen times, and three or four persons are out now after him.

JUDGE KANE. Make proof of service.

Henry H. Kline called.

MR. READ. Before the examination of this witness is commenced, will your honors permit me to ask the Court to exclude all the other wit-

nesses from this examination? Our object is to let each witness tell his own story, in his own way, and without hearing others.

MR G. L. ASHMEAD I do not know that we have any objection to interpose, there are one or two members of the Gorsuch family that we desire to have in the Court-room, the Rev. Mr. Gorsuch particularly.

JUDGE GRIER. The request of the defendant's counsel is reasonable and just. It is proper that a number of witnesses testifying to the same transaction, may not have an opportunity of hearing each other

MR. G. L. ASHMEAD. It extends to both sides?

MR. READ. Yes, sir

MR. J. W. ASHMEAD. I want the Rev. Mr. Gorsuch to be present, he may be a witness to some incidental transactions, not of anything at Christiana.

JUDGE GRIER. Of course. It applies to witnesses who are to testify to the same transaction and whose testimony may differ, so that they may not make up a story together. But a witness who may be called on some collateral fact, it might not extend to him.

MR. G. L. ASHMEAD. I understand your honor to say, that the Rev. Mr. Gorsuch, who is to be called to a collateral matter, may remain in the room?

JUDGE GRIER. Of course, if there is no objection, and I suppose there will be none.

MR. READ. We make no objection.

JUDGE KANE. You may find it convenient to appoint a place where they may remain. I believe an arrangement has been made by the Marshal to have rooms provided for them.

JUDGE GRIER. We will have to detail an officer to take these witnesses. The Marshal will see that these witnesses have some convenient place.

MR. LUDLOW. Mr. Dickenson Gorsuch has, ever since this transaction, labored under a difficulty from his wounds, and it is essential to his health that he should be most especially taken care of.

JUDGE GRIER. The officer will take care to provide for them rooms well heated, and where they will have conveniences in sitting.

The other witnesses are called, and sent out.

MR. LEWIS. Do we understand your honor's direction to extend to the exclusion of our witnesses at present, or when our case is opened?

MR. G L. ASHMEAD. I suppose the witnesses on the part of the defendant ought to be excluded at the same time as ours?

JUDGE GRIER. All who are to give testimony to the same transaction, and may fix their story to contradict or agree with each other, should be absent.

MR. STEVENS. We have not the subpœna for our witnesses here, but if we give notice to all the witnesses summoned on the part of the defendant to withdraw, I have no doubt they will obey it. They are so directed.

Henry H. Kline sworn.

MR. LEWIS. Is there no room in the State House to which our witnesses can retire?

JUDGE KANE. I presume there are. I directed several rooms to be arranged so as to enable the witnesses on both sides to be accommodated. There are at least, two rooms, I know

Thomas S. Stewart, having in the meantime arrived, is called and sworn.

Examined by Mr. G. L. Ashmead.

QUESTION. Are you a surveyor?

ANSWER. Yes, sir.

QUESTION. And draftsman?

ANSWER. Yes, sir.

QUESTION Will you state whether you proceeded to the house of William Parker, near Christiana, and made a draft of the house, and roads, and the country adjacant?

ANSWER. I proceeded to the house that I supposed was his, but I have no knowledge of it myself, except what I was told, and I made a draft.

QUESTION. Is that the draft? (Is handed a paper.)

ANSWER. Yes, sir, this is it.

QUESTION. Are the places, the roads, and the distances marked on that plan, correctly marked and measured?

ANSWER. All the distances given are, except this house, the distance is not given; it is in a north-easterly direction from Parker's. I suppose it to be about 1750 feet from it.

QUESTION. Look at this sketch, (another paper handed to the witness) and say whether it is a perspective view of the same place?

ANSWER. Yes, sir, this is the point of view marked on the plan; this is a perspective view of the house and grounds.

QUESTION. On the lower part of that plan, is there a plan of a house made by you?

ANSWER. Yes, it is said to be Mr. Carr's house.

QUESTION. How far was that from Parker's?

ANSWER. That is more than I can tell. In getting to it we were lost, and did not go the direct road. I suppose it is between two and three miles. On the plan there are the plans of the first and second stories of what is called Parker's house, marking the doors, partitions, and the manner in which it is divided into rooms, and the stairway.

MR. G. L. ASHMEAD. I will hand to your honors the draft in perspective, and the other I beg to hand to the jury.

JUDGE KANE. (To the witness.) Is this laid down absolutely, by a camera?

ANSWER. No, sir; it is drawn by the rules of perspective from this plan.

QUESTION. Do you mean to include the trees?

ANSWER. Yes, sir; they are located upon the plan as I found them in the orchard I cant say they are the exact number. I counted the number of rows, and left out one where I saw one was gone. There are five one way, and six the other; one was dead. The remainder, I think, are right.

Cross-examined by Mr. Lewis.

MR. LEWIS. I see you have marked one tree here.

WITNESS. That tree I was told to mark particularly; I did not do it by measurement, I merely did it by the eye.

QUESTION. You took no measurement in regard to it?

ANSWER. No, sir; it was a prominent oak tree.

Re-examined by Mr. Ludlow.

MR. LUDLOW. You were asked by our friends on the other side, in regard to that tree that you marked without special measurement; why did you place it in that position on the plan, and who were the gentlemen present when it was done?

MR. LEWIS. That wont do.

MR. LUDLOW. If it is meant that the counsel for the prosecution have put upon the plan just what they wished, and nothing else, we wish to show that Mr. David Paul Brown suggested to him to put that in.

MR. LEWIS. The witness knowing nothing about the circumstances must have received from some quarter an intimation to put the tree upon the plan; it is sufficient for him to state, that he received these directions. My question was not that he should state what were the directions.

JUDGE GRIER. We don't know what the difficulty is about.

MR. LUDLOW. Here is a tree marked upon that plan, essential to the proper understanding of the case. That tree, Mr. Stewart remarked, in answer to a question from the other side, was placed there under the direction of some individual. I wish it understood that the plan, taken under my direction on the part of the United States, is an accurate plan, and that that tree was marked upon it, at the suggestion, not only of myself, but of Mr. Brown, one of the counsel for some of the defendants, who was present on the ground.

JUDGE GRIER. If there is such a tree on the ground, it is not an attempt to put a falsehood on the paper.

MR. LEWIS. I asked the witness whether he had taken a measurement as to a particular tree marked and he said he had not, and he is asked on the opposite side what directions he had, and reference is made to something said by Mr. Brown, who is not associated with us in this case.

JUDGE GRIER. Is there not a tree there, do you say it is incorrect?

MR. LEWIS. There are a number of trees on the ground, this is a tree standing in the woods.

JUDGE GRIER. What harm does it do? Is it a false representation of a fact?

MR. LEWIS. No sir. We have the fact that no measurement was made—and then there is a question from the other side as to what directions he received as to marking the tree.

MR. LUDLOW. All I care about is, that the sketch is an accurate sketch of the premises.

JUDGE KANE. I understand Mr. Stewart to say he put it there by estimate?

WITNESS. Yes sir.

Henry H. Kline, examined by Mr. G. L. Ashmead.

QUESTION. Are you the person to whom that deputation is directed? (Hands papers.)

ANSWER. Yes sir.

QUESTION. Are you also the person to whom these warrants are directed? (Hands papers.)

ANSWER. Yes sir.

QUESTION. Did you proceed to serve these warrants at any time?

ANSWER. I did sir.

QUESTION. At what time did you leave the city for that purpose?

ANSWER. On the 9th of September, 1851, between the hours of one and two o'clock, as near as I can remember.

QUESTION. Were you to meet any persons between this and the place to which you were going?

ANSWER. I was to start on ahead in the afternoon and engage a vehicle. I was to go to Penningtonville.

QUESTION. Who were you to meet?

ANSWER. I was to meet Mr. Edward Gorsuch, John Agan, Thompson Tully, Mr. Gorsuch's nephew and three or four other gentlemen.

QUESTION. Do you recollect the names of the other gentlemen?

ANSWER. One was Dr. Pierce, one was named Gorsuch, and the other named Nelson

QUESTION. You say there was a nephew—was there a son of Mr. Edward Gorsuch?

ANSWER. Yes sir, his name was Dickinson Gorsuch—they were the parties to meet me at Penningtonville.

QUESTION. Did you meet them there?

ANSWER. No sir.

QUESTION. Why not?

ANSWER. I went from Philadelphia to Westchester, and there I took a vehicle to Gallagherville, and hired a pair of horses and vehicle to take me to Penningtonville. In the road from Gallagherville to Penningtonville the wagon broke down?

QUESTION. Was that the reason you did not meet them at Penningtonville

ANSWER. Yes sir.

QUESTION. Will you state where you did meet them?

ANSWER. After the wagon broke down we unhitched the horses and came back, and got another vehicle and started on again. I came to Penningtonville and got out; as I got out, I saw a colored man named Samuel Williams; I got out and went into the tavern.

QUESTION. Was he a dark or light colored man?

ANSWER. Light yellow. His residence is in 7th, below Lombard, Philadelphia. I saw him at Penningtonville.

QUESTION. How far is that from Christiana?

ANSWER. They call it a mile and a half.

QUESTION. What day was this?

ANSWER. I saw him on the morning of the 10th of September last, between the hours of twelve and two, as near as I can remember.

QUESTION. How long did Williams remain there with you?

ANSWER. I cant tell. I went into the tavern, and I spied him there. I asked the bar-keeper whether he had seen two horse thieves, two men going up the turnpike on horseback.

QUESTION. Had you any conversation with Williams?

ANSWER. I had.

QUESTION. Did he know you?

ANSWER. He did.

QUESTION. Did he speak to you by name?

ANSWER. Not exactly by name. When I was

talking about the horse thieves, he said they had been here and gone; you have come too late.

QUESTION. You left Penningtonville then?

ANSWER. I started from Penningtonville to go to a place called the Gap. After I had started some hundred yards I looked back and I saw a man of the same description, with a white round-about on, following the wagon; he followed us, I suppose, a mile or a mile and a half.

QUESTION. Who did?

ANSWER. Samuel Williams. I knew him by the description of the same roundabout, and the straw hat. After I got to the first tavern at the Gap, I stopt. I went in and asked the landlord if he had seen two men, horse thieves, going up. I concluded he would follow, and I would throw him off the track. He said no; but he had seen a couple of men, very suspicious looking, and they had gone to Philadelphia. We then left and stopt at the Gap tavern, and put up our horses; that was about three o'clock, as near as I can remember, on the 10th of September. We put our horses away, and I told the landlord we would like to have our breakfast, and we went into the bar-room and laid down on benches. He told us we had better go to bed and sleep for an hour, and I told him we wanted to have our breakfast at half-past four o'clock.

QUESTION. Who was with you?

ANSWER. The name of the man with me was Gallagher. After that, we went to bed. The landlord called us up at half-past four o'clock. We came down and eat our breakfast, and went from the Gap back to Parksburg. I got out of the wagon and I saw Mr. Agan and Thompson Tully in the bar-room asleep. This was the morning of the 10th of September. I shook Mr. Agan and called him outside of the bar-room, and I asked him where the old gentleman, Edward Gorsuch, was. He said he had gone over to Sadsbury, four or five miles across on the turnpike. I told him about Samuel Williams, and he said, yes, he had come up in the same car with him. I started to go over to Sadsbury with Gallagher, in the wagon. We went over, and met Mr. Edward Gorsuch and the party, his nephew and son.

QUESTION. What time was that?

ANSWER. As near as I can tell, it was about nine o'clock on the morning of the 10th.

QUESTION. The gentlemen you have named were with him?

ANSWER. Yes sir. Mr. Gorsuch was standing on the piazza. I gave him a nod, and walked back towards the barn. I had a conversation with him, and I told him of the accident of the wagon, and he said he was sorry. I proposed that all the party should go to Gallagherville, and I stated that Mr. Agan and Mr. Tully had told me they were going to Philadelphia.

QUESTION. Were they to accompany you: as at first arranged?

ANSWER. Yes sir.

QUESTION. Are they officers of the police of this city?

WITNESS. I made no engagement with Tully.

QUESTION. Who is Tully?

ANSWER. I think he is one of the Sheriff's officers af this city. Mr. Agan is a constable of 3d Ward, Southwark.

QUESTION. You told Mr. Gorsuch that they were going to return to Philadelphia?

ANSWER. Yes, sir.

QUESTION. You also said that you yourself had made no arrangements with them?

ANSWER. None at all.

QUESTION. Who was your arrangement made with?

ANSWER. Mr. Agan was in company with Mr. Gorsuch, who wished him to go with us, and I accepted his services.

QUESTION. Was that the same with Tully?

ANSWER. Yes, sir.

QUESTION, After you had told Mr. Gorsuch that Mr. Agan and Mr. Tully were about to return to Philadelphia, what did you do?

ANSWER. I then told Mr. Gorsuch to let the other parties go down with me to Gallagherville, and the old gentleman said he would go back to Parkesburg and see Agan and tell him about it. I then started to Gallagherville, and I was to go down to Downingtown for fear that Mr. Gorsuch would miss them at Parkesburg, and if I saw them to tell them to come back. I went on down to Gallagherville, and staid there until about eleven o'clock, and I then started to Downingtown and waited till the cars came down to go to Philadelphia. I saw Agan and Tully in the cars. I called Agan and told him what Mr. Gorsuch had said. He said no,—that he had seen Mr. Gorsuch, and was going to Philadelphia, and would meet us this evening at Downingtown in the train coming up. I left Downingtown, and went to Gallagherville. By that time the parties had come down, except Edward Gorsuch. After they had their dinners they went into the room and laid down. Mr. Gorsuch made a bargain that if he didn't come down in that train everything was right. He was to see the guide. About three o'clock Edward Gorsuch came and said every thing was right. I told him I had seen Agan and Tully, and he said yes—he had seen them and made arrangements with them to come back,—he had given them more money, and they were to come back. We staid at Gallagherville till 11 o'clock. At 11 o'clock on the night of the 10th, I called them up, and we started from Gallagherville down to Downingtown, and there we waited till the cars came up from Philadelphia. We all got in the cars when they stopped, and Mr. Edward Gorsuch requested me to look up Agan and Tully, and I went through the cars and could not find them, and he asked me to go through again, and I went through the second time and could not find them. We then went up to the Gap, and when we got there, all got out; from there we walked a mile down the railroad towards Christiana.

QUESTION. When you got to the Gap, what o'clock was it?

ANSWER. As near as I can tell it might be half-past one o'clock. The cars left Downington at about half past twelve. We walked from the Gap down towards Christiana. We got somewheres in the neighborhood of a mile I should

think, and there we met a guide—between Christiana and the Gap. The old gentleman, Mr. Gorsuch, told me that was the guide, I nodded to him, that was all. The old gentleman and the guide walked ahead and got somewhere near a mile further towards Christiana and there we stopped, and he pointed to a house where one of the slaves was at. The old gentleman and I had some talk about it, and he wanted me to split the party. I told him it would take all the force we had to take the other two. This one he thought we could get without trouble. We started back towards the Gap, and our guide took us through a cornfield, and some four or five miles and we came out on the Old Valley Road, and we turned up a long lane running north and south. We got up that lane some two or three hundred yards and there we stopt. One of the party had a carpet bag, and we took out some cheese and crackers which we eat, and we fixed our ammunitions and started. We passed a farm house and creek, as we passed the creek, I think Dr. Pierce stopped and was going to get a drink, I said to the old gentleman, it wont do to stop, for it is daylight, and he called them, and we went on some three or four hundred yards and came to an orchard facing Parker's house, the guide pointed and showed us the house. I was on ahead.

QUESTION. What time, was it in the morning?

ANSWER. It was day break.

QUESTION. You came to the house of a man named Parker, look at that draft, and say, whether it contains a correct delineation of the house and surrounding country? (Hands him the plan.)

ANSWER. I should call that a very good draft.

QUESTION. Will you look at that, and say whether it is correct or not? (Handed the other draft.)

ANSWER. I could not tell anything at all about that.

MR. G. L. ASHMEAD. Go on, and tell all that occurred in order.

WITNESS. When we came within about thirty or forty yards we met a black man, who came out of the short lane meeting us The very instant he spied us he took to his heels, up the lane into Parker's house, and I after him. His name was Josh or Nelson. Mr. Edward Gorsuch recognized him, the other one was Josh.

QUESTION. Did you say there were one or two?

ANSWER. One I saw, and one ahead, I could not tell; some of the other witnesses saw him.

QUESTION. You mean to say that one was named Josh and the other Nelson?

ANSWER. Yes, sir. As he ran I ran after him; as I ran I fell over the bars which crossed the lane, I had my revolvers and I fell, the revolvers fell one way and I the other. These bars were in the short lane that led to the house.

QUESTION. What distance were those bars from the long lane?

ANSWER. I should say as near as I can tell, ten or fifteen or twenty yards.

QUESTION. After you got over the bars, what took place?

ANSWER. I ran to the house and saw this Nelson, going into the door and up stairs, and he left the door standing wide open. The old gentleman, Mr. Gorsuch, and one of the others got to the door a little before me. I then went into the house and hallooed up stairs for the landlord, and told him who I was and what I wanted—he made a reply, and said they should not come down.

JUDGE GRIER. It would be better if, instead of relating it historically, you would give it to us dramatically. What did you say and what did he say?

WITNESS. I told him I was deputy marshal—that I had two warrants, one against Nelson and the other against Joshua. They told me there was no such men of that name in the house—that there was men there, but that was not their names. I then undertook to go up stairs and Mr. Gorsuch at the back of me. The first thing, they made a drive at me with a thing with prongs on it.

JUDGE GRIER. Do you mean a pitchfork?

ANSWER. No, sir, I don't know what you call it, it had four or five prongs. They then threw an axe down. I then told Mr. Gorsuch, the old gentleman, that he had better go outside and talk to them from the window. The instant he got outside they fired. I then fired. The gun fired by them was fired out of the second story window at Mr. Edward Gorsuch. I saw it fired. The gun hadn't been pulled out of the window when I was at the door. After I fired they got a little more quiet. I then called one of the men and made them believe, I took a piece of paper out and wrote down, and told him to go to the Sheriff and fetch over a hundred men. I thought that would intimidate them. They began to get scared then and asked me to give them time to consider. I had read the warrants three times to them, twice out of doors, and once in the house. While we were talking he asked me if I would send across to a farm-house for a white man. This Parker asked me—the one I took to be Parker—he told me he was the landlord of the house.

QUESTION. Was he a black or a white man?

ANSWER. He was a colored man, black or yellow.

QUESTION. Did he say another white man was?

ANSWER. He did, but I cant remember the name. He said it was over the next farm, it runs in my mind it was Parnell, or some such name as that. I told him I would. I then turned round to one of the men and asked him if he would go over, and I told them he started, whether he went I dont know. In the mean while Mr. Hanway came up on horseback. The old gentleman, Mr. Edward Gorsuch, requested me to go and ask him to assist us. We found that there was a larger force in the house than we calculated. I came out of the house and went to the bars where Mr. Hanway was sitting on a sorrel horse, and went up to him and said, "Good morning, sir," and he made no reply. I then asked him his name, and he allowed it was none of my business. I then asked him if he lived in the neighborhood, and he made a remark

in the same way. I then told him who I was, and showed him my authority. I took my papers out and handed them to him, and he read them.

QUESTION. Did you hand him these papers? (The warrants.)

ANSWER. I did, and he read them not only once, but twice.

QUESTION. What did you say to him at that time?

ANSWER. I told him I was Deputy Marshal, and came to arrest two fugitives belonging to Edward Gorsuch.

QUESTION. When you told him that, what did he say?

ANSWER. He allowed that the colored people had a right to defend themselves. There was some fifteen or twenty standing there, as near as I can tell, with their guns loaded.

QUESTION. Will you state to the Court again, exactly what Mr. Hanway said at that time?

ANSWER. After I got through telling him these things, who I was, and he had refused to assist me, I told him what the Act of Congress was, and urged him to assist me. After I had told him my warrants, he read them and handed them back, and he said the colored people had a right to defend themselves, and he was not going to help me, and I asked if he would keep them away, and he said No,—he would not have anything to do with them.

QUESTION. How many colored persons were assembled at that time near where you were standing?

ANSWER. As near as I could judge, there must have been from ten to twenty; they were armed—some loading their guns in his presence.

QUESTION. What were these negroes armed with?

ANSWER. They were armed with guns, scythes, and clubs; all had something, nearly all of them, there were very few there but what had something. Two or three I saw had nothing at all. Harvey Scott had nothing, and the first gang had nothing, but nearly all the rest had arms and clubs. I saw Harvey Scott there, he had no arms.

QUESTION. Had these persons you spoke of last, come since your first arrival at the house, or had they been there?

ANSWER. They came there—there was about fifteen or twenty came directly after Hanway. There was an Indian negro came there a few seconds after Hanway, and he had a scythe in one hand and a revolver in the other.

QUESTION. Did the others come up after Hanway?

ANSWER. Yes, sir.

QUESTION. And from the same direction?

ANSWER. Yes, sir, as near as I can tell—some came across the field, but the main body came the same way he went.

QUESTION. What took place further?

ANSWER. While I was arguing with Hanway another gentleman came up, named Elijah Lewis, in his shirt sleeves, with a straw hat on. I called on him in the same manner as upon Hanway—showed him my authority, and he read it and then he handed the process to Mr. Hanway, who was sitting on his horse—that was the second time he read it. He took one of the warrants, opened it and looked at it, and he handed it back again to Mr. Lewis, and Mr. Lewis handed it back to me. Mr. Lewis replied in the same way; he said the colored people had a right to defend themselves, and I had better clear out, otherwise there would be blood spilt; that I could not arrest any people there. I then began to beg. I found then a large number of colored people coming up the road. I then told them that if they would not let these colored people fire on us, I would withdraw my men, but I would hold them responsible for the slaves. I began to beg again and coaxed, for God Almighty's sake that they should not fire on my men, and I would withdraw them. They said they had no control over them. Mr. Lewis walked some three or four yards, as near as I could tell, and I walked with him, still coaxing him. Mr. Hanway walked his horse over to the negroes, some fifteen or twenty, and he sat on his horse and kind of stooped over and said something to them in a low voice, what that was I don't know, but he rode his horse some twenty or thirty yards. This branch party, No. 1, I call, made one shout, and one of them—military whiskers, I call, hallooed out that "he was only a deputy"—up the lane they went and fired.

The party No. 2 came, and as they came up, I saw a great crowd, and when they got some six or eight yards off, and they saw me, and one or two had their guns raising up. I stood alongside of the fence, and took hold of the fence, and they fired, and I over the fence and through the cornfield, and when they got within twenty or thirty yards they all fired and up the lane they went towards Parker's house. I then came out into the road again, pretty much where I left; the first person I saw was Dr. Pearce and Mr. Gorsuch's nephew going down the lane, the long lane towards Mr. Rogers' house. Mr. Dickinson Gorsuch came out of the small lane into the back lane, and I took him by the arm; he was wounded in his right arm and somewhere, so he was bleeding out of his mouth; and I led him from the long lane up to the woods and I set him on a stump and there he kind of fainted. I then looked down the lane and there saw Mr. Lewis and a boy I thought I saw here this morning in the Court, and I called on Mr. Lewis to come back, but the boy with him turned round his head and shook his head, he would not come back. The boy with Mr. Lewis looked back and still went on, they walked very fast, and I walked pretty fast to see if I could not catch up to them. I sent one of the men with me to follow him to see where he went to, and where this gentleman went to I don't know. I found that Mr. Lewis would not come back and I then met a colored man, I asked him whether he could tell where there was a doctor about. He told me, pointing his hand, some two miles to Penningtonville. I recognized him the very instant I put my eye upon him, and I found him to be one of the first men at the house; an old colored man. I went on a little further and I met a man coming very fast on horseback, the horse seemed to be

in a sweat. He came near where I was and hauled his horse up, and I made a reply, I guess you are one of the men giving these colored people information, and he made no reply. I then asked him if he could tell me where there was a doctor about the neighborhood, he made no answer. I asked him if he knew where I could get a horse and wagon, and I followed his horse, but he gave me no answer and went away, and I turned back towards the men. I still kept my eye on Mr. Lewis and the boy till we came to the cross-road, Mr. Lewis turned to the left and the boy to the right to the mill. When I got to the end of the road, I looked after Mr. Lewis and he was out of sight. I went up to the brick mill and stopped, there was a boy standing there with a straw hat on, in his shirt sleeves. This other boy that I followed stopped and talked as I thought with the other boy in the straw hat and shirt sleeves. I then says to him, "Sonney, will you tell me where I can find a doctor, that a man was shot up in the woods," and he pointed over in the same direction to Penningtonville. By that he says, "there comes a squire on horseback."

The gentleman was sitting on his horse in his shirt sleeves. I told him what had happened, and I asked him where there was a doctor, and I think he told me in the same direction as the others did, and I then asked him if he knew where I could get a horse and wagon. I thought I could take the bodies to a doctor quicker than the doctor could come there. I didn't wish to let them lay in the woods. At that time I didn't know that old Mr. Gorsuch was shot. I then started towards Penningtonville. After I got some distance, I met one of my men wounded very bad, and he was as crazy as a bed bug; he didn't know where he was. I got talking to him, and he thought he was in Columbia; he was talking about one thing and another—nonsense. I then took him by the arm and led him about a mile this side of Penningtonville, as near as I can tell to a store. There I got him some water, refreshed him, and he bought him a hat, he had lost his hat. I then offered a man a dollar to take us over to Penningtonville,—he had a horse and wagon there. He took the dollar, and afterwards he said he could not go, and gave me the dollar back. I then walked him over. When I got over to Penningtonville he had come-to a little bit. When the first train came along to go to Lancaster, I sent him home to York to some of his relations. I then offered five dollars a-piece to the neighbors there, for any one to go over and fetch Mr. Gorsuch in a wagon. I found I could not get any doctor—there was none about.

There was several gentlemen willing to go, but they were afraid. One or two of them did start, providing I would not go with them—they were afraid to be seen with me. They told me it would be best for me to stay back at the tavern and they would go over. They did go over and I waited some hour or hour and a half, I should judge, and I didn't see them come back. Some of the neighbors had come over from the scene of action. He had told us that the old gentleman, Mr. Gorsuch, was dead. I then started up to Christiana by the railroad, and I understood they were going to fetch the body there to have an inquest held over it. After I got there some three-quarters of an hour, they fetched the body there in a wagon—they took the body out and put it into a side room. About one or two o'clock, as near as I can tell, the Squire—the one I met on horseback—held an inquest, such as it was. I then told them it was a very curious inquest, as there was no witnesses examined, and I told them I insisted upon it that I should be heard before they gave their verdict, but they didn't hear no witnesses but passed the verdict themselves. I then got some of the gentlemen there to get a coffin and shroud made, and had the body sent that night in the train coming up to Lancaster, and then on to his family in Maryland. I then the next morning started out to see if I could find any of the other wounded men, for I had heard nothing of any of them, nor seen any thing of them from the time of the scene up to that time, excepting the one I had sent home. I had heard that there was two lying in the woods wounded very bad. I then started the next morning with two other men, and went over to see the magistrate and searched the woods all over and I could not find them. On the road to the scene of action, I met Dr. Pierce coming over in a wagon with some of the neighbors. I told him that I was very glad to see him, and we passed some words and I went on. I told him I was going over to see if I could find the other two, and he said he had heard nothing of them

QUESTION. What other two?

ANSWER. Mr. Nelson and Mr. Hutchings.

After that I came back, after searching the woods, and when I got back to Christiana, a young man came to me and called me inside, and said don't make yourself uneasy, your two friends are safe and eat breakfast at our house this morning. That was the last I seen of them till I saw them in Lancaster.

MR. G. L. ASHMEAD. How many negroes did you see collected together at the scene of action?

ANSWER. To the best of my judgment there was near a hundred, full.

QUESTION. Were they all armed, as you have stated the first fifteen or twenty were armed?

ANSWER. Yes, sir; some had clubs, scythes, corn-cutters, and guns—nearly all—some had not, as I saw.

QUESTION. At the time they commenced firing where were you standing?

ANSWER. I was standing at the North of the small lane—say here is the lane comes out, and I was standing a little near to the lane, so that I could not see exactly up the lane on account of the corn.

QUESTION. At the time the firing commenced you were in the long lane?

ANSWER. Yes, sir.

QUESTION. How far were you from the short lane?

ANSWER. I should judge as far as frem here to that gentleman in the jury box. The way I came there was from following Mr. Lewis.

MR. G. L. ASHMEAD. At that time, sir, where did you get?

WITNESS. Over in the corn field.

MR. G. L. ASHMEAD. At that time, sir, when you got over, where was Mr. Hanway?

WITNESS. He was sitting on his horse about 40 or 50 yards off, in the long lane looking back.

Mr. G. L. ASHMEAD. Was it North or South?

WITNESS. South, towards the creek.

MR. G. L. ASHMEAD. Mr. Kline, will you be good enough to say whether this was the person you saw?

WITNESS. That is the gentleman.

MR. G. L. ASHMEAD. Is there any doubt about that?

WITNESS. None at all in the least.

MR. G. L. ASHMEAD. Do you know which is South or North?

WITNESS. No, sir, but when I say South I mean to the left.

MR. G. L. ASHMEAD. You mean to say that Hanway was 40 or 50 yards nearer the creek than you were?

WITNESS. Yes, sir, between the creek and the small lane.

MR. G. L ASHMEAD. What was he doing at the time?

WITNESS. His horse was stopped, and he looked up towards the house. There was several negroes came up past him, and cut across the field.

MR. G. L. ASHMEAD. Were these negroes who passed him armed or not?

WITNESS. I could not see well. I think one had a club or a gun. I could not see well. They cut across.

MR. G. L. ASHMEAD. Did they pass over close to him?

WITNESS. They came right by his horse, and nearly opposite they took and cut catee-cornered towards the house.

MR. G. L. ASHMEAD. Did you see him make any attempt to stop them as they passed him?

WITNESS. No, sir.

MR. G. L. ASHMEAD. I think you have already stated that before he went this distance of 30 or 40 yards, you had seen him go up to the negroes and say something to them in a low tone of voice?

WITNESS. Yes, sir.

MR. G. L. ASHMEAD. Did you hear what he said?

WITNESS. No, Sir.

MR. G. L. ASHMEAD. What did these negroes do, as soon as he had spoken to them?

WITNESS. He moved his horse towards the creek. They then gave one shout. One replied that he was only a deputy, and they up the small lane and fired.

MR. G. L. ASHMEAD. This party that fired, where were they?

WITNESS. Show me the map. That is the small lane. Right on the end of the lane.

MR. G. L. ASHMEAD. They were about the mouth of the short lane?

WITNESS. Standing in the long lane, facing the short lane. I should judge as far as from here as to the judges' box.

JUDGE KANE. Facing in which direction?

WITNESS. A kind of facing the lane.

MR. G. L. ASHMEAD. Were they facing Parker's house?

WITNESS. Yes, Sir. I had my back towards the house.

MR. G. L. ASHMEAD. About what distance were you from them, when they commenced firing?

WITNESS. As I followed Mr. Lewis, that was the time they shot, and they hallooed out he is only a deputy; and they up the small lane and fired.

JUDGE KANE. The witness has not answered your question.

MR. G. L. ASHMEAD. About what distance were you from them, when they fired?

WITNESS. I should judge I could not have been further from where I now stand, and the end of the Judges' Bench.

JUDGE GRIER. Ten or twelve yards, or eighteen or twenty feet, or how far?

WITNESS. I suppose may be, about twenty or thirty feet.

MR. G. L. ASHMEAD. Did they fire at you?

WITNESS. Yes, Sir; the second party, No. 2.

MR. G. L. ASHMEAD. How long was it, after the firing of party No. 1, that party No. 2 fired?

WITNESS. Shortly after.

MR. G. L. ASHMEAD. Can you give us any idea of the time?

WITNESS Not over a minute or two.

MR. G. L. ASHMEAD. Did the second party fire at you?

WITNESS. They fired right over where I was, and I got into the corn field.

MR: G. L. ASHMEAD. You got over into the corn field, and that saved you?

WITNESS. Yes, Sir.

MR. G. L. ASHMEAD. Will you be good enough to say, whether in the corn field, you could see over to the bars.

WITNESS. Not exactly. Where I was, I could not, because I was nearer to the fence than the long lane. I looked to see them. And I went up the lane and came right out, and got the revolver ready, and made up my mind to take them.

MR. G. L. ASHMEAD. Did you see Mr. Edward Gorsuch killed?

WITNESS. No, Sir.

MR. G. L. ASHMEAD. You did not?

WITNESS. No, Sir, I never saw him from the time I left him.

JUDGE GRIER. Let me ask a question. When you were first in the house, when the first gun was fired out of the window, was there any person wounded on either side?

MR. G. L. ASHMEAD. At the time the first gun was fired, was any one wounded?

WITNESS. No, Sir.

MR. G. L. ASHMEAD. When you fired in return was any one wounded?

WITNESS. I fired on purpose to scare them. I fired my revolver right up straight so as to let them know that we had arms.

MR. G. L. ASHMEAD. At the time you saw Dickerson Gorsuch coming out of the short lane, where were you?

WITNESS. I was in the long lane. About that distance from the short lane. I took him to the long lane, thinking I would take him away, and there I had to set him.

MR. G. L. ASHMEAD. Just be good enough to state his condition?

WITNESS. He was wounded in his right arm, through his coat sleeve, and somewhere about the body, and bleeding about the mouth.

MR. G. L. ASHMEAD. Did you go to his assistance?

WITNESS. I did, Sir; and I went away right after. I thought he was the only one wounded.

MR. G. L. ASHMEAD. You say you laid him under a tree?

WITNESS. Yes, Sir, near a stump.

MR. G. L. ASHMEAD. (Showing him the map.) Can you find a tree, corresponding with the one under which you laid him?

WITNESS. That is about the direction I set him, and there was a tree close by.

MR. G. L. ASHMEAD. About how many feet from the mouth of the short lane was the tree to which you took him?

WITNESS. It was across the road on the North nearly facing the long lane.

MR. G. L. ASHMEAD. When you speak of the North side, Mr. Kline, just be good enough to point out on the map which side you mean.

WITNESS. (Pointing on the map.) This is the long lane, and this is the lane leading to Parker's house. I took him out of this lane and set him on the North side of the lane where the wood was, near a tree or stump.

MR. G. L. ASHMEAD. When you speak of the North side, do you know the position in which the North and South are?

WITNESS. No, sir. The reason I call it the North side is because it was the North of me.

MR. G. L. ASHMEAD. Was it upon the side on which the woods were situated?

WITNESS. Yes, sir.

MR. G. L. ASHMEAD. Was Dickerson Gorsuch badly wounded?

WITNESS. He was, sir.

MR. G. L. ASHMEAD. Could he help himself?

WITNESS. No, sir, or otherwise I should have taken him to the nearest farm house I could have taken him to.

MR. G. L. ASHMEAD. Had you any conversation with Mr. Hanway in regard to any law of Congress?

WITNESS. I had, sir.

MR. G. L. ASHMEAD. Be good enough to state to the Court and Jury what it was.

WITNESS. After he refused, I told him what the act of Congress was as near as I could tell him. That any person aiding or abetting a fugitive slave, and resisting an officer, the punishment was $1000 damages for the slave, and I think to the best of my knowledge imprisonment for five years. I told him that. He said he did not care for any act of Congress or any other law. That is what he said.

MR. G. L. ASHMEAD. Was this after he had heard the warrant?

WITNESS. Yes, sir.

MR. G. L. ASHMEAD. You have said you laid Dickerson Gorsuch under this tree. Did you see Dr. Pearce and Joshua upon that occasion?

WITNESS. I did, sir.

MR. G. L. ASHMEAD. What were they doing?

WITNESS. They were going down towards the creek.

MR. G. L. ASHMEAD. Were they walking or running?

WITNESS. Running as hard as they could go.

MR. G. L. ASHMEAD. In what lane were they running?

WITNESS. The long lane towards the creek.

MR. G. L. ASHMEAD. Were they or were they not pursued?

WITNESS. They was, sir.

MR. G. L. ASHMEAD. Who were they pursued by?

WITNESS. By a large number of colored people with guns and other weapons.

MR. G. L. ASHMEAD. Did you see them catch up to Hanway?

WITNESS. I saw Mr. Gorsuch try as far as I could see to get behind the horse.

JUDGE KANE. Which Mr. Gorsuch?

WITNESS. Joshua M. Gorsuch.

MR. G. L. ASHMEAD. Did he succeed in getting behind the horse?

WITNESS. It seemed to me he was trying to get behind the horse to save himself, or to get on the horse or something or other.

JUDGE KANE. Whose horse was that?

MR. CUYLER. Mr. Hanway's horse he is speaking of.

MR. G. L. ASHMEAD. You are speaking of Hanway's horse, are you not?

WITNESS. Yes, sir, he was sitting on the horse at that time.

MR. G. L. ASHMEAD. After you saw him trying to get behind the horse what else did you see?

WITNESS. I thought I could see him go further.

MR. G. L. ASHMEAD. What did Hanway do at that time?

WITNESS. He sat still on his horse, and the horse was in a trot or a run—he was going pretty fast.

MR. G. L. ASHMEAD. Did you see Joshua Gorsuch afterwards?

WITNESS. Yes, sir.

MR. G. L. ASHMEAD. How long afterwards?

WITNESS. I cannot tell exactly the time. He was the one I met between Peningtonville and the mills. He was hurt pretty bad.

MR. G. L. ASHMEAD. How far from the scene of action was he when you saw him?

WITNESS. I should judge one mile or one and a half mile. I cannot exactly tell the distance.

MR. G. L. ASHMEAD. What was his condition at that time?

WITNESS. He was cut over the body and hurt very bad.

MR. G. L. ASHMEAD. Where?

WITNESS. Over the head, down his back, and he was hurt so bad that he had not his right senses.

MR. G. L. ASHMEAD. Did I understand you to say, that at that time he was not in his senses?

WITNESS. Yes, Sir.

MR. G. L. ASHMEAD. Did you see where he went to, Sir, at that time?

WITNESS. What time?

MR. G. L. ASHMEAD. At the time you met him about a mile and a-half from the scene of action?

WITNESS. I took him.

MR. G. L. ASHMEAD. Where?

WITNESS. To Peningtonville.

JUDGE GRIER. Is that the same person?

MR. CUYLER. He merely called him one of his men before.

MR G. L. ASHMEAD. You say you saw Hanway coming up to the bars on horseback?

WITNESS. Yes, Sir.

MR. G. L. ASHMEAD. Will you say, when he first came up to the bars, what the negroes did?

WITNESS. He had not been there no time, before No. 1 party came up, and they stood and loaded their guns in his presence.

MR. G. L. ASHMEAD. At the time Hanway came to the bars, or shortly afterwards, did you see the negroes in the house do anything?

WITNESS. No, Sir. Not from the time I left the house, until I got down to the bars.

MR. G. L. ASHMEAD. Mr. Kline. Did you see Mr. Hanway the next day after this occurrence had taken place?

WITNESS. No, Sir. I saw him the next morning. Do you mean the day after the occurrence?

MR. G. L. ASHMEAD. That is what I asked you. Where did you see him?

WITNESS. Sitting on the porch of the house, which I should call Mr. Rodgers' house, beyond the creek, near the scene of action.

MR. G. L. ASHMEAD. Did you have any conversation with him?

WITNESS. Not there, Sir. I merely passed, as I was going to the woods to search for these men. Two other gentlemen were with him.

MR. G. L. ASHMEAD. You had no conversation with him at that time?

WITNESS. Not at all.

MR. G. L. ASHMEAD. Did you see him after that?

WITNESS. Yes. On the day of the arrest at Christiana. That was on the twelfth.

MR. G. L. ASHMEAD. You say you saw him at Christiana?

WITNESS. Yes, Sir. I saw him on the twelfth.

MR. G. L. ASHMEAD. I thought it was on the thirteenth when he was arrested?

WITNESS. It was on the twelfth or thirteenth, in the afternoon.

MR. G. L. ASHMEAD. You saw him at Christiana?

WITNESS. Yes, Sir.

MR. G. L. ASHMEAD. Whereabouts at Christiana. What house?

WITNESS. After the warrants were issued; some one gave him notice that the arrest was going to be made; he then came over and gave himself up.

MR. CUYLER. It was a voluntary surrender.

MR. G. L. ASHMEAD. Were you present at the arrest?

WITNESS. Yes, sir.

MR. G. L. ASHMEAD. Had you any conversation with them?

WITNESS. Yes, sir.

MR. G. L. ASHMEAD. What did you say to Hanway.

WITNESS. I told him you are one of the men and he would not deny it. I then went on to say something, and they told me not to say anything to him.

MR. G. L. ASHMEAD. What else did you say?

WITNESS. I cannot recollect, because somebody bothered me.

MR. COOPER. You say you saw Mr. Hanway the next morning, at Rogers'?

WITNESS. I think so.

MR. COOPER. How far is that from Parker's.

WITNESS. I should judge some 400 yards. It might be half or a quarter of a mile. I cannot say. It is upon the Creek and Granville Road.

MR. COOPER. Was any body present the next day when he was arrested, and when you said he was the person?

WITNESS. A great number of persons.

MR. COOPER. Who?

WITNESS. Mr. Reigart. and Mr. Thompson, the District Attorney of Lancaster.

MR. BRENT. You say that one of the men you met in the lane was Josh?

WITNESS. It was Nelson.

MR. BRENT. You say one was Nelson and the other was Joshua. How did you know their names, when you did not know them before?

WITESS. The old gentleman said, "this is Nelson," and he called for him to come down and begged for him to come down.

MR. BRENT. How did you know who the other was. I suppose it was derived from the old gentleman?

WITNESS. Yes, sir.

MR. BRENT. Which way did they go?

WITNESS. They got over the fence and went across the orchard.

MR. BRENT. Did you hear any noise in the house when you first went there?

WITNESS. Yes, sir.

MR. BRENT. What did you hear?

WITNESS. First, I tell you they began to load and make a noise up stairs.

MR. BRENT. You heard the guns loading.

WITNESS. Yes, sir.

JUDGE GRIER. Where the horns blown in the house or at other places.

WITNESS. I only heard one horn in the house. The others seemed in the neighborhood around, as far as I could hear the sound.

MR. BRENT. That is all.

The witness is cross-examined.

MR. STEVENS. You have been examined twice before in Lancaster county, I believe?

WITNESS. Once in Lancaster, and once in Christiana.

MR. STEVENS. Did you ever before say in either of those examinations, that you heard anybody say what the name of the black fellow was that you first chased?

WITNESS. I think I did.

MR. STEVENS. Where?

WITNESS. At Christiana, sir.

MR. STEVENS. In your deposition which you made at Christiana?

WITNESS. I think so, to the best of my knowledge and recollection.

MR. STEVENS. That was the deposition upon which the warrants were issued to arrest the parties that you spoke of?

WITNESS. I cannot say exactly whether it was.

MR. STEVENS. I mean the deposition you made at Christiana before Squire Pownell.

WITNESS. I made it before the District Attorney, and Squire Pownell was there, and signed his name to it. It was made up in quick hand writing.

MR. STEVENS. You know what was in the deposition, of course.

WITNESS. I cannot recollect. I just merely give the outlines.

MR. STEVENS. When you were examined in Lancaster, didn't you say there was but one negro that you chased down to the house?

WITNESS. I say so yet, that I saw myself.

MR. STEVENS. Who was ahead in the chase down the short lane, which of your party; or were you ahead of all the party?

WITNESS. We pretty much started at the same time. They went across the orchard, and I went down the lane.

MR. STEVENS. Were you ahead, or was any body ahead of you?

WITNESS. I saw Hanway, and then I saw Gorsuch and another party ahead of him.

MR. STEVENS. How could any party that was behind you see any more than you did?

WITNESS. I fell over the rails.

MR. STEVENS. They passed you, then?

WITNESS. Yes, sir.

MR. STEVENS. You said just now, that you heard a horn from the window and others all around through the neighborhood.

WITNESS. I did not say all around; I heard three or four.

MR. STEVENS. Were they out of the house?

WITNESS. I do not know where they were. I only heard the sound.

MR. STEVENS. They must have been very near or you could not have heard them.

WITNESS. I could hear a horn better than a person talking.

MR. STEVENS. That particular sound you can hear further than any other.

WITNESS, I can hear it further off than a person standing at a great distance. The horn at the house I heard quite plain.

MR. STEVENS. Might not the others you heard he the echo from those hills around?

WITNESS. I do not think so.

MR. STEVENS. I understand you to say there was a party of black people in the long lane when you had the conversation with Mr. Hanway?

WITNESS. Yes, sir.

MR. STEVENS. You stated in your examination at Lancaster, that they took that stand on the opposite side of long lane, facing the fence; is that so?

WITNESS. I told you in my cross-examination they stood facing the small lane in the long lane.

MR. STEVENS. Did you not say they were on the opposite side of the long lane joining the fence?

WITNESS. Yes, sir. They stood catee-cornered.

MR. STEVENS. Did they stand on the side of the long lane furthest from you?

WITNESS. The lane went this way, (pointing to the right,) and I stood at the mouth of the small lane.

MR. STEVENS. You are not very distinct.

WITNESS. Show me the map. (Looking on the map, and pointing.) This is the lane, there is the house.

MR. STEVENS. You say they stood by this fence, and on that side of the road?

WITNESS. I say so yet.

MR. STEVENS. It was furthest from Parker's house?

WITNESS. It was to the left of Parker's house.

MR. STEVENS. That is, on the side of the long lane most distant from Parker's house, and you say so now?

WITNESS. Yes, sir.

MR. STEVENS. When the conversation took place between you and Hanway, in which he said they had a right to defend themselves, you were at the bars.

WITNESS. No, sir. I will explain myself. When he came to the bars I said, Mr. Hanway, good morning.

MR. STEVENS. Tell me where you were when this conversation took place.

WITNESS. Over the bars—

MR. ASHMEAD. I must insist upon this, that when a question is put to a witness, and when he has stated a certain thing, and is going on in dstail, I do say that he ought to be permitted to go on with his statement.

JUDGE GRIER. Let the witness speak for himself.

MR. STEVENS. Where were you when this conversation took place between yourself and Hanway, that you have already detailed?

WITNESS. I crossed over the bars to give —— —— my watch. I got down to the end of the lane crossing the road, and there stood Hanway, myself and Mr. Lewis. Hanway's people stood at the end of the lane, at the opposite side of the big lane.

MR. STEVENS. Then this conversation you have detailed took place at the mouth of the little lane and the larger one, at the end section on the side nearest to the house, and not at the bars?

WITNESS. We continued conversing from the bars to the end of the lane, because he worked his horse back and forward until he came to the end of the lane.

MR. STEVENS. At that time he said they had a right to defend themselves?

WITNESS. At the mouth of the small and big lane.

MR. STEVENS. Who was present with him at that time?

WITNESS. Some fifteen or twenty colored people.

MR. STEVENS. I speak besides the colored people.

WITNESS. I think there was Dr. Pierce, who had come down from the bars.

MR. STEVENS. Was Lewis there?

WITNESS. He had come directly afterwards, and he said the same in Lewis' presence.

MR. STEVENS. And after Lewis came up, he repeated the same thing to both of them?

WITNESS. Pretty much.

MR. STEVENS. That long lane which was between the negroes and this spot, was about from twenty to twenty-five feet wide.

WITNESS. I cannot tell.

MR. STEVENS. Your judgment of it?

WITNESS. I put no judgment upon it.

MR. STEVENS. You could have judged its width?

WITNESS. I may give a rough guess, it may be fifteen feet and it may be twenty-five.

MR. STEVENS. Was Mr. Lewis down at the bars at all, and how near the bars?

WITNESS. I cannot say, they worked themselves a kind of away, and I a kind of twisted myself round and talked to them.

MR. STEVENS. Can you tell how near to the bar Mr. Lewis was at all?

WITNESS. I suppose he might have been as far as from here to the end of the table, at one time.

MR. STEVENS. You say as near to the bars as the length of this table, Mr. Kline?

WITNESS. Yes, sir, as near as I can recollect.

MR. STEVENS. Where was Mr. Lewis at the time you say that Mr. Hanway rode the horse across the lane, and stooped down as if he were talking to the negroes?

WITNESS. He had made a move to go away, and he turned to the left of me to the woods.

MR. STEVENS. How near was he to you at the time this should have taken place, and at the time you say that Hanway rode up and said something in a low voice?

WITNESS. He had just left us. He walked.

MR. STEVENS. How far did he get?

WITNESS. He walked away and I followed him about the length that gentleman sits. (pointing.)

MR. STEVENS. You were both about that distance when he rode up to speak to the negroes?

WITNESS. No, Mr. Lewis was ahead of me.

MR. STEVENS. How far?

WITNESS. I cannot tell.

MR. STEVENS. You do not know how far Lewis was, then?

WITNESS. He might have been as far as that gentleman sitting there is from me.

MR. STEVENS. How far was Lewis off?

WITNESS. I cannot say.

MR. STEVENS. Was he two or three yards off?

WITNESS. He was two or three yards off, may be more.

MR. STEVENS. Now, sir, before you left, was not there another white man with Mr Hanway, that did not belong to the party?

WITNESS. No, sir, except a boy; he came afterwards.

MR. STEVENS. After what?

WITNESS. After the scene was all over?

MR. STEVENS. Didn't he come before Hanway went away?

WITNESS. No, sir.

MR. STEVENS. Then I distinctly understand you, that before Hanway went away, there was no other boy present except those belonging to the party, and those you have mentioned who were at the mouth of the lane.

WITNESS. None at all, except the boy.

MR. STEVENS. Was that boy there?

WITNESS. He came.

MR. STEVENS. Was he there before Mr. Hanway went away?

WITNESS. Yes, sir, I am speaking of a white boy.

MR. STEVENS. Did a white boy come with Lewis?

WITNESS. I judge he did.

MR. STEVENS. Did he remain there?

WITNESS. He stood away off, and when they had fired he went away.

MR. STEVENS. Did he leave before Hanway left, or after?

WITNESS. He went with Mr Lewis, before Hanway. They both nearly went at one time.

MR. STEVENS. Did you ever see that boy, as you call him, since?

WITNESS. I think I have, I may be mistaken.

MR. STEVENS. Was it not John Bodily who was examined at Lancaster?

WITNESS. I cannot say exactly. He had a kind of a white slouch hat on. That John Bodily was not over at the scene of action.

MR. STEVENS. Was he there before Mr. Hanway rode away?

WITNESS. No, Sir. Not to my knowledge.

MR. STEVENS. When you were examined at Lancaster you stated, you had seen George Washington Harvey Scott there, did you?

WITNESS. Yes, sir.

MR. STEVENS. And I understand you to have said so now?

WITNESS. I do, sir.

MR. STEVENS. Have you seen him often since that time?

WITNESS. No, sir.

MR. STEVENS. Have you seen him since that time?

WITNESS. I have.

MR. STEVENS. How often?

WITNESS. I saw him the day we took him to prison.

MR. STEVENS. And you saw him at Lancaster?

WITNESS. Yes, sir.

MR. STEVENS. And you saw him on the ground?

WITNESS. Yes, sir.

MR. STEVENS. What time did you see him on the ground?

WITNESS. I saw him there with the first party.

MR. STEVENS. Did you see him there after Hanway came?

WITNESS. I saw him after Hanway came, because no one came after Hanway.

MR. STEVENS. This man came up with the colored men who came after Hanway came?

WITNESS. Yes, sir.

MR. STEVENS. That is Harvey Scott's father?

WITNESS. Yes, sir.

MR. STEVENS. Might not you be mistaken about its being Harvey Scott?

WITNESS. No, sir. I took a good look at him. He seemed scareish and back'd off a little before the second firing.

MR. STEVENS. Before the firing at you?

WITNESS. Yes, sir.

MR. STEVENS. Did I understand you to say, that when the first firing commenced, not the one made upon you, but that made down the lane, you were then in the long lane within 12 feet of the mouth of the short lane?

WITNESS. I can't say whether it was 12, 18, or 20 feet.

MR. STEVENS. Were you there at the time the firing took place down the lane that killed Mr. Gorsuch?

WITNESS. Yes, sir.

MR. STEVENS. You are quite sure you got over into the corn-field?

WITNESS. Positive.

MR. STEVENS. You did that when you saw them about to draw the trigger upon you?

WITNESS. Yes, sir.

MR. STEVENS. Did you get into the field before the guns went off?

WITNESS. I did, Sir. I just got down as they fired.

MR. STEVENS. Where did you stand, at the time you saw Mr. Joshua Gorsuch and Dr. Pierce, alongside of the horse of Mr. Hanway, trying to get on?

WITNESS. I stood in, facing the lane.

MR. STEVENS. The short lane?

WITNESS. No, Sir; I stood in the long lane, and I came into the corn field.

MR. STEVENS. Did you get out of the long lane into the woods, when you saw Joshua Gorsuch and Dr. Pierce trying to get on to the horse.

WITNESS. I saw Joshua Gorsuch coming down from the creek. Then Dickerson came up, and stood and saw the parties run down to the creek.

MR. STEVENS. You were out of the long lane?

WITNESS. No, sir.

MR. STEVENS. Were you out of the long lane at the time?

WITNESS. I was facing the long lane; looking right straight down the long lane towards the creek.

MR. STEVENS. Was that before or after you had taken Dickerson Gorsuch up to the woods?

WITNESS. It was afterwards.

MR. STEVENS. Did Joshua Gorsuch and Dr. Pierce overtake Mr. Hanway, before or after he had crossed the creek, going up?

WITNESS. It seemed to me it was after he had crossed the creek. I think so, but ain't quite sure.

MR. STEVENS. After the first time that you went up into the woods, did you that day go over, down into the short lane again?

WITNESS. After I had took Mr. Gorsuch?

MR. STEVENS. No, after you had went up that day. Did you go back again to the mouth of short lane?

WITNESS. I never went up to the roads but once, and that was the time I took Mr. Gorsuch.

MR. STEVENS. Then you did not go up to the roads till after all the firing was over?

WITNESS. No, sir.

MR. STEVENS. Did you leave the mouth of the long lane at all, before the firing was over?

WITNESS. You mean the small lane.

MR. STEVENS. No, I mean the long lane, if you will excuse me.

WITNESS. I stood in the long lane, when the first took place, and the second I crossed over to the corn field.

MR. STEVENS. Had you gone up to the woods until all the firing was over?

WITNESS. I took Mr. Gorsuch up there, and I did not go back.

MR. STEVENS. Did you ever tell anybody that you had withdrawn, and was up in the woods before the firing commenced?

WITNESS. No, sir. I am positive of that.

MR. STEVENS. Did you ever tell any person, that you had withdrawn from the ground before the firing commenced?

WITNESS. No, sir.

MR. STEVENS. I did not mean the firing at the house, but the firing that killed Gorsuch?

WITNESS. No, sir.

MR. STEVENS. Had you a conversation with two persons at Hanway's mills, when you were going off?

WITNESS. I had a conversation with a boy. I first spoke to the squire, and I asked him the same thing.

MR. STEVENS. Was there not a boy and a short man?

WITNESS. One a boy, and the other Mr. Lewis. The one I saw with Mr. Lewis, was the other boy.

MR. STEVENS. You said a while ago, he was the one you saw down the lane.

MR. ASHMEAD. He expressly said he could not see him.

MR. STEVENS. Was it the same one you saw at the mill with Lewis; and the same boy you conversed with at the mill?

WITNESS. He was not at the mill, he was in the lane."

MR. STEVENS. I thought you said there was a boy with Lewis down at the mouth of the lane?

WITNESS. He was between the mouth of the lane and the road along the other way; he stood off.

MR. STEVENS. Which way did he come?

WITNESS. I should judge he came from the side of the woods.

MR. STEVENS. Mr. Lewis came down from that part of the woods when he came there, did he, which turns out to be the southern part?

WITNESS. I do not know whether it was the north or south.

MR. STEVENS. That is the way they came?

WITNESS. I do not know exactly the way they came, because I did not see them until they had walked down along the small lane.

MR. STEVENS. I thought the boy never got to the lane?

WITNESS. I say the boy did not come down to the mouth of the small lane, he stood the length of the room off.

MR. STEVENS. Was it towards the woods, or up towards Roger's house?

WITNESS. Towards the woods.

MR. STEVENS. About the length of this room?

WITNESS. Yes, sir.

MR. STEVENS. Did I not understand you to say, he came with Lewis?

WITNESS. He came in the same direction that Mr. Lewis did.

MR. STEVENS. Are you sure that Lewis came down from the woods?

WITNESS. I should judge he came that way, but I cannot tell.

MR. STEVENS. Then you dont know which way he came?

WITNESS. No further than he came in that direction; I cannot tell whether he came over the fields or not.

MR. STEVENS. Did you not see this boy, you now speak of, at the mill, go with another man there before the squire came up?

WITNESS. No, sir; I saw a boy there, but no body else.

MR. STEVENS. Then you did not talk to two of them?

WITNESS. I said nothing but to this small boy, and I asked him where I could get a horse and wagon.

MR. STEVENS. He was the only person?

WITNESS. The other boy was standing off.

MR. STEVENS. Which other boy?

WITNESS. The one I followed down from the scene of action.

MR. STEVENS. I mean the boy that went away from Mr. Lewis. Was that the one that came down with him?

WITNESS. I suppose it was.

MR. STEVENS. Then there were two?

WITNESS. No, that was the same boy.

MR. STEVENS. When you were talking with the boy at the mill, was there any other white man present?

WITNESS. Not at that time, because the squire was the only white man present.

MR. STEVENS. Were there two boys present at the mill when you were talking?

WITNESS. Yes, sir.

MR. STEVENS. And both of them heard what you said.

WITNESS. I don't know, one was going on, and he a kind of halted.

MR. STEVENS. You don't know whether he heard you or not.

WITNESS. No, sir.

MR. STEVENS. He did not ask you any questions?

WITNESS. Not at all, sir.

MR. STEVENS. Do you know Mr. Thomson Lawhead?

WITNESS. Not that I know of.

MR. STEVENS. But the man that was up at the mill with the boy, or the two boys, as you call them, was the same one as was down the mouth of the lane or near it with Mr. Lewis?

WITNESS. The boy that was down near Mr. Lewis, I followed to the mill, and there I left him.

MR. STEVENS. Where did the other one come from?

WITNESS. He was standing there very near as I came down.

MR. STEVENS. Then you did not see Bodley there at all?

WITNESS. I don't recollect just now.

MR. STEVENS. You saw no other white man there before Hanway went away down the lane?

WITNESS. No, sir. If I had I should have taken notice.

MR. STEVENS. Did not some one at the mill say to you, you ought to come away before the firing took place?

WITNESS. No, sir. There was not a soul spoke a word to me but those two boys, and the Squire.

MR. STEVENS. Did one of these boys ask you why you did not come away when you saw all those blacks?

WITNESS. No, sir. There was not a soul.

MR. STEVENS. You did not say you left yourself, your men would not come?

WITNESS. There was not a word passed. There was not another living soul there except the boys until the Esquire came up.

MR. STEVENS. Did you know any of the blacks that were there except Washington Harvey Scott?

WITNESS. Yes, sir.

MR. STEVENS. Please to name any of those you knew to be present?

WITNESS. It would be hard for me to recollect their name. I only knew them by sight.

MR. STEVENS. You have given their names at Lancaster, please to state them now.

WITNESS. I did not give their names. I only gave descriptions. I do not know their names now. I might if I heard them. I cannot recollect them distinctly.

MR. STEVENS. You spoke about Morgan, was he there?

WITNESS. Yes, sir.

MR. STEVENS. The Morgan you saw at Lancaster and who is in jail now. You are quite sure?

WITNESS. I gave the description you saw in the warrant, before he was arrested.

MR. STEVENS. Henry Sims, was he there

WITNESS. Yes, sir.

MR. STEVENS. Before the firing?

WITNESS. Yes, sir.

MR. STEVENS. Geo. Williams, was he there?

WITNESS. Yes, sir.

MR. STEVENS. Nelson Carter, was he there?

WITNESS. By the name I cannot recollect.

MR. STEVENS. Then you do not recollect Nelson Carter's being there?

WITNESS. Not by name.

MR. STEVENS. Have you seen all those in jail?

WITNESS. I think I have.

MR. STEVENS. Were they all there?

WITNESS. I think they were.

MR. STEVENS. Were they all present?

WITNESS. They were all present that I pointed out.

MR. STEVENS. Were all those who are now confined in jail on this charge present?

WITNESS. I cannot say all. There might have been some others, arrested by other persons; all I saw up at Christiana are there, to the best of my knowledge and belief.

MR. STEVENS. Did you not swear against all that are here?

WITNESS. I don't know, there might have been some others sworn.

MR. STEVENS. Have you not been to the jail to see them?

WITNESS. I only saw one or two. It is only once I was down there.

MR. STEVENS. Chas. Hunters, do you remember him?

WITNESS. Not by name.

MR. STEVENS. Was he there or not?

WITNESS. If I was to see him I could tell.

MR. STEVENS. If the Court please, the course of our defence requires that these prisnners should be brought into Court, that the witness should see them. I would ask that the Court direct them to be brought up.

JUDGE GRIER. If it is necessary.

MR. STEVENS. I deem it necessary. Mr. Kline has heretofore identified most of these men. I want to prove what he says is false, and thereby to show that he don't know who are and who are not prisoners. I shall want him to swear from his present recollection, of those that were or were not present. I deem it very essential, because your Honors will perceive this is the leading witness on the part of the United States. It is our object, (I do not say how far we shall succeed), but it is our object to break down his evidence and prove it entirely false, and for that reason I shall ask that these men be brought into Court.

JUDGE GRIER. Go on with the cross-examination.

MR. ASHMEAD. I have no objection, on the part of the Government, to interpose to this motion. If they are brought up and identified, well and good. It is a collateral issue, and the moment it is done, the gentlemen are bound.

MR. STEVENS. It is not a collateral issue. If there is war made we must see the soldiers. We will go on with the other part of the cross-examination, but we may be obliged to discharge the witness until they have brought these parties here.

MR. LEWIS. Regular trains run twice a day to Penningtonville, and you went to Chester. What was the reason, instead of going there direct?

WITNESS. I got up, and found there was no conveyance to go to Gallagherville, between 1 or 2 o'clock. I inquired, and they said there was no train went up till 10 o'clock that evening. I sat down and began to consider. It struck me about the West Chester cars, and I went down to Rice, the collector, and asked him what time the cars went. I sat down and smoked a segar with him, until the cars went up. I then got inte the cars and went to West Chester. I got there about dusk.

MR. LEWIS. Were you not aware that a train started at that time for Penningtonville?

WITNESS. No, sir.

MR. LEWIS. When you were at West Chester you took a driving conveyance to Gallagherville?

WITNESS. Yes, sir.

MR. LEWIS. Did you go direct then?

WITNESS. Yes, sir.

MR. LEWIS. Did you not go to Mortonville?

WITNESS. I went to Gallagherville and had my supper there.

MR. LEWIS. Did you stop on the way?

WITNESS. No, sir.

MR. LEWIS. Did you not stop at Mortonville, and there make arrangements with an individual to have his horse and wagon on the ground the next morning?

WITNESS. No, sir, I never spoke to a living soul except the driver till I got to Downingtown.

MR. LEWIS. Downingtown is 15 or 20 miles from the Gap?

WITNESS. It is two miles below Gallagherville, towards Philadelphia.

MR. LEWIS. You first went to Downingtown, to the Gap, still proceeding west. Then you came back to Parkesburg east. Then you went to Sadsbury north. Then you came to Gallagherville, still nearer Philadelphia. Then to Downingtown, and from there back to the Gap.

WITNESS. Yes, sir.

MR. LEWIS. At your examination before the committing magistrate at Lancaster, did you mention it?

WITNESS. Yes, sir.

MR. LEWIS. Before Squire Pownell.

WITNESS. He did not seem to take much interest in it. He merely put his name to it.

MR. LEWIS. Did you mention it before Commissioner Ingraham?

WITNESS. I think I did.

MR. LEWIS. What took you to the Gap?

WITNESS. When I went away from the Gap to Penningtonville, I could not tell where Gorsuch and his party was. I thought I would go up to the nearest tavern. I went up and inquired there, and found he had not been there, and I went to the next tavern; and we there stopped to feed our horses and for a little rest.

MR. LEWIS. Did you meet any of your party at the Gap?

WITNESS. No, sir.

MR. LEWIS. Tell me of whom your party consisted?

WITNESS. The deceased Mr. Edward Gorsuch, his son, Dr. Pierce, Mr. Joshua, and Mr. Nelson.

MR. Lewis. Were those all who were with you on the morning of the 11th?

WITNESS. Except the guide.

MR. LEWIS. What time was it in the morning you started from the Gap?

WITNESS. At the time the rest arrived at the Gap, it might have been half-past one or two, as near as I can tell.

MR. LEWIS. These were the only persons constituting your party at that time?

WITNESS. At that time.

MR. LEWIS. Had you no others until the time you reached the ground?

WITNESS. Except the guide.

MR. LEWIS. Who was he?

WITNESS. I could not tell his name. He had a straw hat and a handkerchief tied around it.

MR. LEWIS. You did not engage him?

WITNESS. I had nothing at all to do with him at all, sir.

MR. LEWIS. If you had no arrangements to make, no persons to call upon, why did you preceed the rest of the party?

WITNESS. After I came to Penningtonville, I was behind my time, because the wagon broke down. I got there fifteen minutes after the rest had arrived. I was hurt very much, and that kept me behind.

MR. LEWIS. In passing over from the Gap to the house of Parker, you say that you stopped at a house were you supposed one of the slaves were?

WITNESS. We did not stop at the house, it was some distance from that house.

MR. LEWIS. How far were you at the time you stopped and held that consultation?

WITNESS. I should judge may be perhaps three, four, or five hundred yards.

MR. Lewis. Where was it?

WITNESS. I do not know, I could not tell now.

MR. LEWIS. Was it directly on the road to Parker's house?

WITNESS. No, sir. Down the road towards Penningtonville.

MR. LEWIS. Why was it you did not arrest that slave?

WITNESS. The old gentleman wanted me to go with him and the rest of the party. I said no, we wanted all our force to take the other two. He said the other one would come home without any trouble.

MR. LEWIS. Is that the reason you have always assigned?

WITNESS. He said he thought we had better take the other two and he would come back.

MR. LEWIS. Is that the only reason you have ever assigned? Has your testimony upon that subject always been uniform?

WITNESS. Just exactly what I have said before. Not exactly perhaps the same language, but the same meaning.

MR. LEWIS. Did you not say it was because he was a married man?

WITNESS. He said he was a married man, and he thought he would come home without any trouble.

MR. LEWIS. You say that you arrived at Parker's house about day light?

WITNESS. Yes, sir.

MR. LEWIS. You went in the house and up the stairs. Is there a door there?

WITNESS. There is a door and it was open.

MR. LEWIS. Where were you when you heard the horns?

WITNESS. At the foot of the stair-case.

MR. LEWIS. You heard them after you had got in?

WITNESS. Yes, sir.

MR. LEWIS. How long were you in the house before you went out?

WITNESS. I cannot say exactly.

MR. LEWIS. Was Gorsuch in the house?

WITNESS. He was there nearly all the time.

MR. LEWIS. Who went out of the house first?

WITNESS. Mr. Gorsuch.

MR. LEWIS. How long was it before he went out?

WITNESS. Directly after the gun fired. I then took out my revolver and fired right up.

MR. LEWIS. Were you in the door way?

WITNESS. I was just outside.

MR. LEWIS. He was by your side?

WITNESS. No, sir. Further towards the lane.

MR. LEWIS. How far from you, about how far.

WITNESS. I cannot tell exactly, it might have been as far as from me to you, and it might be not so far. Directly opposite the window.

MR. LEWIS. Did you read the warrants there again?

WITNESS. I read them twice, inside and outside the house.

MR. LEWIS. Did you go into the house again?

WITNESS. Yes, sir.

MR. LEWIS. What took place after you went into the house?

WITNESS. After I had read the warrants, I got a piece of paper, as if to send it to the Sheriff. They seemed to be scared; I went out again.

MR. LEWIS. It was after you read the warrant that the man above told you there were no such men there?

WITNESS. He said there was no such men as Joshua Hammond and another.

MR. LEWIS. Did you see any other men in the house but Parker. Did you see him?

WITNESS. I saw three or four others. They kept dodging and peeping, and I saw several at the window, and they kept themselves behind.

MR. LEWIS. Do you know who they were you saw?

WITNESS. No further of myself, Mr. Gorsuch recognized Nelson and Josh. I had never seen them before—they had been pointed out by Gorsuch.

MR. LEWIS. Did not the men show their faces out of the window to satisfy Mr. Gorsuch?

WITNESS. No, sir. One of the men came to the window, and I saw several others that were dodging.

MR. LEWIS. How long were you at the house before Mr. Hanway came up?

WITNESS. We might have been up there some half an hour; may be not so long.

MR. LEWIS. Were you not there more than one hour?

WITNESS. I cannot tell.

MR. LEWIS. Were you not there nearly two hours?

WITNESS. No, sir; not one hour, I think.

MR. LEWIS. Did you see Hanway coming?

WITNESS. No, sir.

MR. LEWIS. In your judgment, what time elapsed between the arrival of Hanway and Mr. Lewis upon the ground?

WITNESS. It might have been some eleven minutes; may be five minutes; I cannot tell exactly. It might have been a little longer, or not so long. I had been talking to Mr. Hanway sometime before Mr. Lewis came up.

MR. LEWIS. Did you see Hanway come up, or was he out of the road when you first saw him?

WITNESS. He was sitting on his horse up at the bars. That was the first sight I had of Hanway.

MR. LEWIS. Did Lewis come up to the bars?

WITNESS. He did not come to the bars. He might have been the length of the table off. He walked around about and talked.

MR. LEWIS. You have said here, that you saw upon the ground John Morgan. Did you see him in the first party of ten or fifteen that were upon the ground?

WITNESS. Yes, sir; there might have been twenty, I guess.

MR. LEWIS. Where did you see him?

WITNESS. He was with the first party, and he had a kind of scythe in his hand. They call it a corn cutter.

MR. LEWIS. Was he the one you saw standing in the long lane?

WITNESS. Yes, sir.

MR. LEWIS. Did you see Henry Sims amongst that party?

WITNESS. I saw the man they call Henry Sims, and he had a gun.

MR. LEWIS. Was George Williams among that party?

WITNESS. I do not know whether he was or not by his name.

MR. LEWIS. Had he anything there?

WITNESS. I don't know exactly whether he had a gun or not.

MR. STEVENS. We shall be able to cross-examine much faster, after these men have come into Court.

JUDGE GRIER. You had better send a habeas corpus ad testificandum for them.

MR. STEVENS. For all the persons who are in prison under the charge of treason?

MR. ASHMEAD. Don't your honors think they all had better be sent up?

MR. STEVENS. We do not dispute but that some of them were there.

MR. ASHMEAD. Mr. Scarlet was there.

MR. STEVENS. Will the gentlemen let us do what we think better on our side, and they can do what they think better on the other side.

MR. ASHMEAD. May it please your honors. I think a warrant should be sent for them all, so that the residue may come up at the same time.

MR. STEVENS. We will furnish the names of those we desire to see in Court.

JUDGE GRIER. The Clerk can issue a writ of habeas corpus ad testificandum, returnable to-morrow morning, and deliver it to the Marshal.

JUDGE KANE. I understand the counsel for the United States have issued warrants for all who are not named by the counsel for the defence.

JUDGE GRIER. I have found the tipstaves sometimes break the letter of their oaths, before the ink is dry that wrote them. It should not be so. I have altered the oath to be administered in such cases, so that the letter may conform to the spirit. I cannot permit oaths to be administered, the letter of which the officer is compelled to break immediately.

MR. ASHMEAD. We are agreed to it

MR. G. L. ASHMEAD. It is well to modify it, on account of a juror becoming sick, and rendering it necessary to employ the services of a physician.

JUDGE KANE. Gentlemen of the Jury, the Marshal has asked us if you can communicate with your families by letter. There is no difficulty about your addressing them, but all communications that come to you must be examined by the Marshal, and if there is anything relative to the cause in hand contained in them, they must be submitted to the Court. Letters *from you* of course are not to be inspected under any circumstances. Letters *to you* must pass under the eye of the Court.

JNO. JENKINS and W. H. MILLER, were then specially sworn according to the oath provided by the Court, viz.:

"You and each of you do swear, that you will keep this jury in some private and convenient place, and remain there in attendance upon them, that you will suffer no one to speak to them, nor speak to them yourselves, upon any matter touching the cause now upon trial, unless it be to ask them if they have agreed upon their verdict. So help you God."

The jury retired under the charge of the officers.

The Court adjourned until to-morrow at 10 A.M.

SATURDAY, NOVEMBER 29, 1851.

THE COURT OPENED AT TEN O'CLOCK.

Present Judges Grier and Kane.

The empannelled jurors were called and answered to their names.

MR. READ. Will your honors allow me to mention a matter that is personal to the prisoner? Your honors will perceive that his health is not strong. It has always been delicate; but the confinement within the Moyamensing prison, although conducted with great liberality, being in a single cell with Mr. Lewis, has brought on pains in his breast and side; and his wife, I think, has represented to one of your honors, that the condition of his health is such as to demand, if possible, some place where he can have a freer air, and where he would not be exposed to the same confinement that takes place in a small room.

I mention this because I know your honors will in your liberality deal with him in the best way the law may allow you.

JUDGE GRIER. As a general rule, where the prisoner is uncondemned and in good health, the same sort of justice, if I may so call it, or treatment, is measured out to all, high, low, rich, and poor, and the marshal would be bound to keep the prisoner in the cell as other prisoners; but where it is a question of his health, especially before trial and before conviction, we have no

right, if he can be safely kept otherwise, to keep him in a manner injurious to his health; and of course, the marshal, if he can give this prisoner better lodging, feeling certain that he can keep him safely, we have no objection to any indulgence of that nature, and direct the marshal to grant it to him. Wishing it to be understood, however, that it is done not as a favor to person, or a distinction between the prisoners in this case, but it is only on account of his health, that the confinement in which he now is, is injurious to it.

Mr. READ. There is another matter, of which I would like to speak to the Court. It is our object on both sides to shorten this case as much as possible, and to relieve your honors and the jury from the burden of it. The matter which I wish to submit to the Court, I mentioned to the District Attorney, but to which I understand no agreement comes on his part.

We have now proceeded so far as to come to a particular part of the cross-examination of Mr. Kline. We have summoned a large body of witnesses, and are summoning more, to one particular point—which if it had been disclosed upon the part of the evidence of the United States, we always presumed it would be legal to bring evidence to contradict it—or to show that the state of facts was different from what was represented by the United States. The United States have not examined on that question, and we have been commencing a cross-examination upon the same point, to which the same witnesses would be rebutting. It was stated yesterday by the District Attorney, that he considered these questions irrelevant—not in the point of view that they could not be put—but that we would be bound by the answer, and could not rebut it by testimony, as I presumed we could, if introduced by the United States. Our object in mentioning it is to avoid the necessity of bringing up this question at another period of the case, when we should be obliged to be keeping sixty or seventy witnesses here at a large expense, and which could be disposed of now. Our object was to submit, before we went into this cross-examination—for if decided against us it stops the cross-examination on that point, and shortens the cause, and if decided in our favor we should go on with the cross-examination; and I propose to submit to the Court, without argument, the simple question, whether if we cross-examine upon the point which we were at yesterday as to the identification of certain persons, we should be able afterwards to produce witnesses to show that these persons were not there; or in fact to contradict directly what the witness says. Our object is to save time, a large expense, and to facilitate the business of the Court.

What I meant by the prosecution not examining to it, is that they have examined without the names, and without the identification of particular persons.

Mr. STEVENS. And I would add to that, that we intend to confine our cross-examination to the persons spoken of by Mr. Kline as being present without his naming them. We ask him to name those he spoke of as being present, and we want to contradict him by proving that they were not present.

Mr. COOPER. We suppose the suggestions that have just been made are out of place—this matter will come up hereafter, and the gentlemen ought to pursue now such a course as they deem proper. If they propose questions now to the witness for the purpose of contradicting him hereafter, it will be asking rather too much of the United States to agree that they should do so. The United States cannot do so. When the question comes up as to their right to contradict the witness we shall be prepared to discuss the question—but until then we dont agree to anything of this kind.

Mr. READ. We dont ask them to agree—we simply submit the question. If the Court decide against us it would stop our cross-examination on that point—if the Court decide in our favor, we would go on—and we did not want to incur the necessity of keeping a large body of witnesses in attendance to prove a fact; when if the Court decide against us we should not keep the witnesses or conduct the cross-examination.

JUDGE GRIER. In a case of this description, the Court do not feel at liberty to go on and decide beforehand and without argument any question that may affect the rights of this defendant; it would be premature. But at the same time, we think it is due to you, after the manner in which you have presented it, to say what our view would be at present. It has not been endeavored to prove the names, or to identify the other hundred, said to be there, armed or in the commission of the act. It is no part of their case or evidence; it is a matter collateral to the question, whether it was A. B. or C. D. or E. F.; or any other letters of the alphabet, that were present on that occasion. Then it would appear to come under the rule, when you go to a matter collateral to the issue, you make him your own witness; and you cannot do it for the purpose of bringing other persons to contradict him. It may be raising here forty or fifty collateral issues, and after all it might not have very great weight as to the testimony of a man in a crowd, and in a great contest. I have often heard the best of witnesses make the greatest mistakes as to the identity; it never affects their testimony at all on other grounds. It may be possible that matters may turn out; that a man may mention matters in the examination-in-chief, and you may bring it out more broadly in cross-examination, and you could bring other witnesses to show that he falsified.

JUDGE KANE. I entirely concur with Judge Grier. My impressions are, that the direct and most pertinent answers to the proposed questions would introduce collateral subjects. At the same time, I can well imagine, that portions of the answers to such questions, might be without the rule which excludes collateral matters; where the character of the examination-in-chief has been such, that perhaps answers that might be drawn out by the proposed cross-examination, might be pertinent to the issue. I make the remark, merely as excluding the pre-

judication upon one of the questions that may hereafter arise.

MR. STEVENS. We troubled your honors to have these prisoners brought into Court, expecting it would be legal for us to ask the witness, whether one or all of these were present, and to disprove the fact, he would prove with regard to them. We are disposed of course, to yield to the suggestion of the Court, though not formally made. We dont want to occupy the Court so long as we would be in examining their witnesses, and then have our contradiction excluded. We therefore wish, that the prisoners may be remanded.

MR. ASHMEAD. Then the persons we also ordered to be brought up on the part of the United States—the white men—may go down along with the others, as the other side do not intend to make inquiry as to the colored people. I have no questions to put as respects the others.

JUDGE GRIER. We are not desirous of trying thirty-eight issues in one.

The prisoners are remanded.

MR. STEVENS. I find there is an error in the printed testimony of yesterday. I understand that we all agree as to that. It is on page 99. The witness says "after he *resisted* I told him what the Act of Congress was." The language used by the witness was—"After he *refused* I told him," &c.

JUDGE KANE. I believe the witness meant to say *refused*, but my ear was misled as the Phonographer's was, or he said resisted. I think he said *resisted*, but the connection satisfies me he meant refused.

MR. ASHMEAD. There may be other corrections to make, and we ask that your honors will allow us at any time to move the Court to make the corrections. On page 97 there is a mistake, which I ask at this time to be corrected. At the middle of the page, the question is put down, "You mean to say that Mr. Hanway was 40 or 50 yards nearer than you were?" It should be, "40 or 50 yards nearer *the creek* than you were."

JUDGE GRIER. There is a mistake of very little importance on page 98—the question intended to be asked by me, was "on *either* side;" it is put down "on the *other* side."*

Henry H. Kline resumed.

Cross-examined by Mr. Stevens.

QUESTION. You said in your examination that you did not see or know that old Mr. Gorsuch was killed, till after you had left and gone away?

ANSWER. Yes, sir.

QUESTION. Have you told any person that you saw a man shoot old Mr. Gorsuch?

ANSWER. No, sir.

QUESTION. Have you told any person that you saw Parker shoot old Mr. Gorsuch?

ANSWER. No, sir.

QUESTION. Did you tell Jacob Whitson either of these things I have asked you?

ANSWER. No, sir, and nobody else.

QUESTION. Did you tell any person that you heard Mr. Hanway give particular orders to the negroes?

ANSWER. No, sir.

QUESTION. Did you tell Samuel H. Laughlin that you heard him tell the negroes to shoot?

ANSWER. No, sir, and no person else. I dont know such a man.

QUESTION. Did you say to Mr. Laughlin, that you were in the woods when the firing in the lane took place?

ANSWER. No, sir, nor no person else.

QUESTION. Nor to Lewis Cooper?

ANSWER. No, sir.

QUESTION. You said so to no person, I understand?

ANSWER. Yes, sir.

QUESTION. What time in the morning was it, when the firing in the lane, at which these people were killed and wounded, took place?

ANSWER. Between the hours of five and seven, I cant tell exactly; as near as I can tell.

QUESTION. Cant you tell a little nearer?

ANSWER. No, sir.

QUESTION. You were perfectly cool and knew what you were about: cant you recollect whether it was six, or half-past six?

ANSWER. I cant tell, I dont know the exact time.

QUESTION. Cant you tell from the rising of the sun?

ANSWER. No, sir, I dont know what time the sun rose.

QUESTION. Did you see it rise that morning?

ANSWER. I did not exactly see it rise, but I knew when it was up.

QUESTION. Was it before or after you read the warrants in the house?

ANSWER. The sun was not up when I read the warrants in the house?

QUESTION. It is very important for us to know; cant you tell how long it was from the time you chased the negroes into the house till this firing commenced?

ANSWER. I cant tell exactly, it may be three quarters of an hour, it may be an hour.

QUESTION. That is the nearest you can get to it?

ANSWER. It might not have been so long, and it might have been longer; I cant recollect.

MR. STEVENS. Did you tell Mr. Cooper, that if your men had obeyed you there would have been no damage done?

WITNESS. Not all, sir. Mr. Cooper, I had no conversation with him.

MR. STEVENS. Mr. Lewis Cooper then took a walk with you and you wanted to have a conversation with him?

WITNESS. No, sir, I would not have any conversation with him.

MR. STEVENS. How did you know him?

WITNESS. He was pointed out to me.

MR. STEVENS. Then you had no conversation with Lewis Cooper?

WITNESS. Not a word, I am positive.

MR. STEVENS. Was it on the day of the riot you saw him?

WITNESS. I saw him on the next morning; on the 12th.

MR. STEVENS. That is the only day you saw him?

* These errors occurred in the daily report of the proceedings to the Court—they are corrected in this edition.

WITNESS. The only time I saw him, except at Court and at Lancaster.

MR. STEVENS. You did not tell him, that you called three times to your men to come away, and they would not obey you, and then you left?

WITNESS. I had no conversation with him from first to last, neither good or bad.

MR. STEVENS. Was he present when you had a conversation with anybody else?

WITNESS. Not that I know of, for I was careful what I said.

MR. STEVENS. Did I understand you, you did not know Wilson?

WITNESS. Not by name, sir.

MR. STEVENS. Do you remember going to a man's house to hunt for Parker?

WITNESS. I do.

MR. STEVENS. Did he hear the conversation of which you speak?

WITNESS. I had no conversation at all, sir.

MR. STEVENS. You have spoken of arms by those negroes, had they any arms?

WITNESS. Not that that I know of, sir. They might have had something in their pockets, I did not see anything in their hands.

MR. STEVENS. I am asking you what you saw, not what might have been. What arms had your party?

WITNESS. I think the six of us had four revolvers. The old gentleman had no arms, and one of the others.

MR. STEVENS. Who was the guide?

WITNESS. It is impossible for me to tell sir, I don't know.

MR. STEVENS. Black or white man.

WITNESS. White man I took him to be.

MR. STEVENS. Why couldn't you tell the color?

WITNESS. He was disguised. I took him to be white.

MR. STEVENS. Were there but four armed?

WITNESS. I think so to the best of my knowledge. I had a revolver.

MR. STEVENS. After the battle begun did you discharge your revolver?

WITNESS. No, sir.

MR. STEVENS. You were not near enough to do execution then?

WITNESS. I was near the corner of the end of the lane, sir.

MR. READ. What time was it you left the Gap, coming over to Parker's house?

WITNESS. As soon as the cars stopped at the Gap, we came down, between 12 and 2

MR. READ. What time did you arrive at the little Creek?

WITNESS. Day break.

MR. G. L. ASHMEAD. One single question. Sir, you have said that you were careful of your conversation with Mr. Cooper.

WITNESS. I was, sir.

MR. G. L. ASHMEAD. Why were you careful?

MR. STEVENS. Dont state the motives of the witness.

JUDGE GRIER. I do not see any good in asking him to repeat it, that I know of.

MR. G. L. ASHMEAD. If your Honor please, the witness was asked by the other side, whether he had certain conversations with Mr. Cooper. The witness said he was careful. He did not state why he was careful, other than that he was cautioned against him. I now proceed to ask him further why it was he was careful of conversing with Mr. Cooper.

JUDGE GRIER. By your own statement, he says that he was cautioned against him.

MR. G. L. ASHMEAD. I am perfectly aware that he gave that answer. I want to know whether any reason was given to him for that caution.

JUDGE GRIER. I do not think it has anything to do with the case; such a question.

MR. BRENT. You say you never saw him except at Christiana?

WITNESS. Yes, sir.

MR. BRENT. When was it?

WITNESS. On the day after the murder.

MR. BRENT. Were you there, when the coroner's inquest was held?

WITNESS. Yes, sir.

MR. BRENT. Was he or was he not, one of that coroner's jury?

WITNESS. Yes, sir. He was, sir.

MR. BRENT. You saw him at that time, sir?

WITNESS. Yes, sir.

JUDGE KANE. Who is this. Is it Cooper?

MR. G. L. ASHMEAD. Yes, sir.

MR. BRENT. Yesterday, Mr. Stevens understood you to say, that, the reason why Mr. Gorsuch saw the negro, was because he ran by you in the lane. Did you mean to convey that idea to the Court and jury?

WITNESS. Mr. Gorsuch had crossed the fence at the house, and got to the bars before I got up.

MR. BRENT. He did not pass you in the lane then?

WITNESS. No, sir. He went cat-a-cornered over to the house.

MR. R. M. LEE. You said you saw a person upon a horse that was sweating. Was that at the scene of action?

WITNESS. No, sir.

MR. R. M. LEE. Where was it?

WITNESS. After I left the colored man, I met Mr. Scarlett on horseback coming from the scene of action and his horse was very warm.

MR. R. M. LEE. He was not at the scene of action?

WITNESS. Not that I saw, sir.

MR. G. L. ASHMEAD. That is all, sir.

Dr. Thomas Pierce is sworn, and testifies as follows.

MR. G. L. ASHMEAD. Are you a resident of Delaware county, Maryland?

WITNESS. I am.

MR. G. L. ASHMEAD. Did you reside near the late Mr. Edward Gorsuch?

WITNESS. I did, sir. I do.

MR. G. L. ASHMEAD. Were you related to him, sir?

WITNESS. I did, sir. I was.

MR. G. L. ASHMEAD. What relation?

WITNESS. Nephew.

MR. G. L. ASHMEAD. Did you accompany Mr. Edward Gorsuch, and Mr. Henry Kline, and other gentlemen to Christiana, in the month of September, last?

WITNESS. I did, sir.

MR. G. L. ASHMEAD. Did you arrive in Christiana on the morning of the 11th of September, last?

WITNESS. I did sir. I think it was on that morning, sir, the 11th.

MR. G. L. ASHMEAD. On your way up there, sir, did you hear instruments of any kind, and if so, state what?

JUDGE GRIER. Had he not better go on and state clearly all that transpired?

WITNESS. Have you reference to our passing over to Parker's?

MR. G. L. ASHMEAD. As you went up the road to Christiana?

WITNESS. As we passed over to Parker's we heard a bugle blown.

MR. G. L. ASHMEAD. In what direction was that, sir?

WITNESS. It was to our right as we passed over. I think to the west.

MR. G. L. ASHMEAD. Did it appear near, or at a distance?

WITNESS. Not very remote, sir. I should suppose about a quarter of a mile by the sound.

MR. G. L. ASHMEAD. About what time did you arrive at Parker's house, on the eleventh?

WITNESS. About the first dawn of day.

MR. G. L. ASHMEAD. Will you be good enough to go on, and state in your own way, and give a connected statement of what you saw, heard, and did, on that occasion?

WITNESS. We passed along the long lane, and before reaching the short lane, a black person was discovered, and chased to the house. Mr. Kline (the marshal,) being front. My uncle, I thought, come next; and the rest were behind. Dickerson Gorsuch and myself were the two in the rear. We jumped over the fence and passed over the orchard, and we nearly arrived at the house as soon as the foremost of them. They however, had passed in; on approaching the house, I received a severe blow from a missile thrown from a window above, over my right eye, the prominence of which you may perceive now; during that time, the Marshal and my uncle were in the house, trying to effect an entrance up stairs, but were opposed by the blacks. This continued for some time in the house, before the warrants were read. After they found they could not effect an entrance, the warrants were read, and the proprietor of the house was called for; we stating that there were two persons in the house that we came to arrest. Fugitives from servitude, belonging to Edward Gorsuch. The warrants then were taken out and read, for Nelson and Josh, by the Marshal. At which time he stated he was the deputy Marshal of the United States, and came to arrest them. After a short period my uncle came out, and I think that the Marshal followed him, and the warrants were read outside of the house to the proprietor, as he represented himself to be, of the house. The window was raised, and he was looking out conversing with us. My uncle told the Marshal that they came there to arrest them, and he was determined to do so, and he would not go home without them. Evincing this determination, the Marshal then shamm'd to send an order for so many men to come and assist him, and he went up to one of our men, and dispatched it to Penington-ville. I think however, at that time, or about that time, they asked for time to consider.

JUDGE GRIER. The persons up stairs?

WITNESS. Yes, sir. The persons up-stairs. About this time, however, Mr. Hanway, the prisoner, rode up to the bars on, I think, a sorrel horse. The Marshal then went out to him and stated distinctly, (I heard him say,) "he was a Marshal of the United States, and came with proper authority to arrest two slaves belonging to Edward Gorsuch," and he requested him or asked him to assist in the arrest, which he positively denied.

MR. COOPER. What did he say.

WITNESS. Well, I heard him positively deny. The Marshal presented him papers and he read them and handed them back to another person that was standing by on the ground, with his back towards me. He also read them, at least, he had them in his hand, whether he read them or not I cannot say. I advanced towards the gentlemen at the bars and towards the Marshal, and I heard the person on the horse reply to him, "You need not come here to make an arrest."

These were the words as near as I can recollect. I think it was in this way: You had better go home, you need not come here to make arrests, for you cannot do it. He also continued, and said something about blood. I could not distinctly understand the latter part. While we were standing there, there was a number of blacks, armed, came, both on foot and horseback. After conversing with them for some time, he remarked, I heard him distinctly, to the young man, you may retire now, as there was no possibility of making an arrest. At the conversation (I might have finished) I heard the marshal tell the prisoner, that he was Marshal of the United States, and that he came with authority to arrest. When he refused, he told him that he held him responsible for the slaves; the whole party. There were two talking at that time, Lewis and Hanway, when the marshal said he would hold them responsible for the slaves.

The Marshal remarked to our party that we had better retire, as there was no possibility of making an arrest. I went at that time for my uncle and I stated to him what the Mashal had said. They were coming from every quarter, and as far as I believe, armed with clubs and pistols, corn-cutters, guns or something of the kind. Most every one I saw had something to defend himself with. After stating this to my uncle, we passed down towards the bars, and I thought they were about to retire. But I turned around after having gone a few paces and I observed he was retiring again towards the house. I saw the imminent danger to which he was exposed, and I then went a few paces further towards the bars, to call the marshal; as I thought it absolutely necessary to have our party together, so that we might defend ourselves the best way we could.

After reaching the bars, or not reaching the

bars, (I never did,) very nearly, within some six or eight steps, I called for the Marshal. (but in a low tone as I thought the blacks might know him.) I then looked up and down the lane, and I could see nothing of him. At this juncture of time, the blacks from the house had passed down the lane between my uncle and myself, and them from the sides of the lane had run up above and raised a regular yell. After the party from the bars had met the party from the house, they turned on my uncle. I then was passing up towards him. On passing up I observed one of his slaves running, with a determination evinced from his countenance and attitude to shoot, and I think the last I saw of him, was that he was in the act of shooting. Whether he fired or not I cannot say, I think my uncle received a blow over the head which knocked him down, and he fell on his hands and knees, and when partially recovered he received another blow. At this time I think he was shot, for he went down and fell, I inferred from the manner, and from the relaxation of his muscles evidently he was dead. During the time, I heard several guns fired. I got the nearest to him I could, for the crowd that were between he and myself. The others were rushing up all around. I was nearly or quite enclosed. I walked through the crowd however. After I passed out or during the time, Gorsuch ran up to the assistance of his father and fired. I am satisfied he fired, for he had the pistol presented sufficiently long for him to shoot, and I think I heard the report from his pistol.

MR. COOPER. Which Gorsuch?

WITNESS. His son, Dickinson. He raised his pistol a second time to shoot, and I think about that time. I think I saw him change his position, as though he might have been struck with a club or something or other. Whether he was struck or not, I cannot say distinctly, but I think so. At that time I passed out of the thickest of them, and made my escape. I jumped over the bars; and at that time there was a number of guns shot. How many, I could not say; but there seemed from the time I started running, until I jumped the bars, about eight or ten, and the fire was kept up during the whole rout along the lane. When I jumped the bars I saw Hanway looking in the direction where my uncle fell, but before reaching him he a-kind-a started off, and he a-sort-a came to the branch, and I ran up to him.

MR. CUYLER. What do you mean by the branch? the creek?

WITNESS. Yes, sir. I ran up to him and spoke to him and he passed on. Joshua Gorsuch was a little in the advance of me. He was running ahead of me, and he went up to him and asked him to let him get on the horse behind. He then asked him to loan him his horse, and he begged of him to stop and arrest the negroes in their cause. He turned round to them and said something to them; what it was I cannot say, but I know he replied and said he could not do anything for us, and he hurried off and left us at full speed. I then passed up to to the farm house on the hill. I omitted to say that when Mr. Hanway rode up to the bars, the negroes seemed to give up; but on seeing him they raised a yell, and became fully confirmed (in my opinion) to repel to the very last These are all the common run of things that I recollect.

MR. G. L. ASHMEAD. Did you recognize on that occasion any of the slaves of Edward Gorsuch?

WITNESS. I recognized Noah.

MR. G. L. ASHMEAD. Noah who?

WITNESS. Noah Buley.

MR. G. L. ASHMEAD. Who was the man you met first in the morning, and who ran back in the house?

WITNESS. That is more than I can say. I did not recognize him.

MR. G. L. ASHMEAD. Did you see any other slave of Mr. Gorsuch upon that occasion that you recognized?

WITNESS. No, sir, I did not.

MR. G. L. ASHMEAD. Were you wounded, doctor?

WITNESS. As I stated, I received a very severe blow over the eye, which resulted in giving me a very black eye, and quite staggered me at the time I received it. During the time I was among the negroes, I received a shot in my wrist, the impression of which you can see now. I also received a shot in my shoulder blade, and in my spine two shots. It was so deep that it could not be felt, and my clothes were shot in a number of places.

MR. G. L. ASHMEAD. How many?

WITNESS. I never counted, but some 20 or 30.

MR. G. L. ASHMEAD. Did you receive any bullet through your hat?

WITNESS. I received a——I observed a black fellow on the fence with a revolver. I do not know whether he fired it, but afterwards I perceived a bullet hole through my hat, and the scalp of my head was slightly injured.

MR. G. L. ASHMEAD. When was the first gun fired upon that occasion?

WITNESS. The first gun fired that I saw was at my uncle, from the window, which I believe I omitted to state.

MR. G. L. ASHMEAD. Was that before or after Hanway came up?

WITNESS. That was before.

MR. G. L. ASHMEAD. Who was it fired at?

WITNESS. At my uncle, sir? I stated that I saw a man fire at him from one window and that he had better be careful?

MR. G. L. ASHMEAD. At the time that Hanway and Kline were talking together, at the bars or near the bars, at the time that you have stated you heard a portion of the conversation, were the negroes who were around there, near enough to hear what was said?

WITNESS. Yes, sir. They certainly were.

MR. G. L. ASHMEAD. You have just stated at the time you came down towards the bars, just before the firing had commenced, or about that time, that you called for the Marshal, and you could not see him?

WITNESS. Yes, sir.

MR. G. L. ASHMEAD. Will you be good enough to point out the position you occupied at

that time? Will you be good enough to look on the map?

WITNESS. (Looking at the map.) I recognize the plan. I was some 6 or 8 steps from the bars in the short lane near Parker's house.

JUDGE GRIER. Have you no more copies of the map?

MR. ASHMEAD. No, sir. We will have two prepared by Monday.

MR. G. L. ASHMEAD. My question was this. I want to know whether if the Marshal was in the long lane, a few steps distant from the short lane, you could have seen him from your position in the short lane.

WITNESS. I should suppose I could, had not that spot in which the Marshal stood obscured him from my vision.

MR G. L. ASHMEAD. About how many negroes were there on this occasion?

WITNESS. At the lowest estimate about 80.

MR. G. L. ASHMEAD. Did you see any other white men there upon that occasion than the two you have described or mentioned?

WITNESS. I saw white men running, (as I passed down the lane,) across the field. I should take them to be white men.

MR. ASHMEAD. Before the fight, had you seen any more white men than the two you mentioned?

WITNESS. No, sir, none at all.

MR. G. L. ASHMEAD. Did you see Dickerson Gorsuch after this transaction?

WITNESS. No, sir, not until I saw him at Mr. Pownell's that same evening.

MR. G. L. ASHMEAD. Be good enough to state in what condition he was, at that time.

WITNESS. I considered him to be in a very prostrated condition, his pulse was scarcely perceptible, the fever high, and the pain intense.

MR. G. L. ASHMEAD. State where he was wounded.

WITNESS. He was wounded in the posterior part of the right arm, and the side. The shot I think came rather obliquely.

MR. G. L. ASHMEAD. About how many shots were in his side?

WITNESS. I think the Doctor said there were over 70, I did not count them.

JUDGE GRIER. Small shot?

WITNESS. No, sir, squirrel shot.

MR. G. L. ASHMEAD. About 40 in his side and 30 in his arm?

WITNESS. About 40 in his side and 30 in his arm, or 30 in his side and 40 in his arm. Dr. Patterson said there was 70.

MR. G. L. ASHMEAD. What was your opinion of his condition at that time?

WITNESS. My opinion, sir, on the evening I saw him there, was, that he certainly was dying. Respiration was very difficult, fever high, and pulse remarkably low, which led one to believe there was very little hopes of his recovery.

MR. G. L. ASHMEAD. Do you know how long it was before he reached home in Maryland?

WITNESS. No, sir. I cannot say. I think in the neighborhood of four weeks to the best of my recollection.

MR. G. L. ASHMEAD. Did you see Joshua M. Gorsuch after this transaction?

WITNESS. I did, sir, on Friday or Saturday, I forget which. I think on Friday, it was just after I arrived home I saw him.

MR. G. L. ASHMEAD. Be good enough to state what his condition was at that time.

WITNESS. I found him in bed. I did not examine him. I did not feel his pulse, I merely conversed with him and he showed me his wound.

MR. G. L. ASHMEAD. Where was it?

WITNESS. The wound was on the hinder part of the cervicle and occipatal bones, crossing the suture, and I think it was about three inches in length.

MR. G. L. ASHMEAD. Did they have any effect upon his mind?

WITNESS. It certainly had a decided effect.

MR. G. L. ASHMEAD. State what, if you please.

WITNESS. Generally before this affair he was not inclined to talk much, and at that time I found him conversing decidedly more than I had ever heard him at any future time, and much easier excited. He appeared to be much more excitable.

JUDGE GRIER. Was it a gun-shot, or a bruise?

WITNESS. At the time I looked back; at the time the fellow had shot the last gun at me, he turned back and met Joshua. I saw him raise the gun and strike him. It might be a gun, I think it was. He fell forward, whether he fell to the ground or not, I cannot say.

MR. G. L. ASHMEAD. At the time that Joshua Gorsuch requested Mr. Hanway to let him get on the horse, what did Mr. Hanway say?

WITNESS. He said he could do nothing for us, and he said something else; but that I heard distinctly.

MR. G. L. ASHMEAD. After Hanway had left, did Joshua Gorsuch continue to run up the lane?

WITNESS. Yes, sir, he did, and they then shot at us.

MR. G. L. ASHMEAD. Did the firing at you continue during that time?

WITNESS. Yes, sir; until they had struck Joshua.

MR. G. L. ASHMEAD. After Hanway had left, who was ahead, you or Joshua?

WITNESS. I ran with Joshua for a time, but finding that they were overtaking us rapidly, I ran off as quick as possible, and left Joshua behind.

QUESTION. Did you look back after you had got ahead of him?

ANSWER. I did, as I stated.

QUESTION. What did you see?

ANSWER. I saw this fellow strike him over the head with what I took to be a gun.

QUESTION. Did he fall when he was struck?

ANSWER. He fell forward; whether to the ground or not I cannot say.

QUESTION. Have you stated all the conversation at the bars, or near the bars, between Hanway and the Marshal, that you can recollect?

ANSWER. Yes, sir. All I can distinctly recollect. I had a conversation with Hanway, but what is was, I cannot at this time recollect.

QUESTION. Be good enough to state what you said to him.

ANSWER. Why, I asked him, why he came there; what was the object of his coming there; whether he had better not stay away, or whether he did not suppose his presence inspired them. He gave me a very decided answer at that time, which struck me.

MR. BRENT. Where was that conversation?

ANSWER. At the bars

QUESTION. The same day?

ANSWER. The same day. I cannot recollect what Hanway said.

QUESTION. Was Hanway's manner wild or otherwise?

MR. STEVENS. What he said and did.

JUDGE GRIER. What he said and did.

MR. READ. That is making the witness the judge of what the manner was.

MR. ASHMEAD. He had a conversation, the details of which he does not recollect. We now propose to ask him the manner of his conversation, whether it was angry or mild. He can remember the tone of it; and the manner after all means as much as the matter.

JUDGE GRIER. You can tell whether it was angry or pleasant.

ANSWER. It was decidedly angry; the conversation on both sides.

MR. COOPER. Were there more than one party of negroes on the ground?

ANSWER. Yes. They might have divided into as many parties as they thought proper.

QUESTION. Did they come together, a number of them?

ANSWER. Yes. A number of them were at the bars, and there came a party and surrounded me.

QUESTION. Did they form into groups?

ANSWER. Yes sir. I think a number had assembled when the Marshal was there; and another party surrounded me, and out of which I had to walk before I could make my escape.

QUESTION. What number do you suppose were in that group?

ANSWER. There were two groups.

QUESTION. I mean the group at the bars?

ANSWER. One party came from the house, and in another distinct party there might have been 10 or more.

QUESTION. You stated they were generally armed?

ANSWER. Yes; but I don't know what they had.

QUESTION. Where did you first see Dickinson Gorsuch after the fight?

ANSWER. I saw him at Mr. Pownell's.

QUESTION. What condition was he in, mentally, at that time?

ANSWER. Why, sir, he was in a very prostrated condition. He evidently had his reason about him. He knew me, recognized me, and conversed with me, but he was certainly in a very prostrated condition.

QUESTION. Which party was it that raised the yell?

ANSWER. The party that came from the house. When the other party met the first set advancing to the bars.

QUESTION. Was that before or after Mr. Hanway had spoken to the Marshal?

ANSWER. Oh! it was after, certainly.

QUESTION. How quickly after the shout did the firing succeed?

ANSWER. The firing commenced nearly about the same time. After they had made the shout, they turned on my uncle and knocked him down.

MR. BRENT. You say that the Marshal despatched a person to Penningtonville. Who was it?

ANSWER. He requested Joshua Gorsuch to go.

QUESTION. Did he request him bona fide to go or not?

ANSWER. I merely saw the instrument he gave to him.

QUESTION. You did not hear his remarks?

ANSWER. No, sir.

QUESTION. Was it in the presence of the persons at the windows of the house, so that they could see?

ANSWER. I think they could.

JUDGE GRIER. I suppose they were to bring men from the village?

ANSWER. Yes, sir.

MR. BRENT. Did you hear any noises or sounds from the house before Hanway arrived?

ANSWER. I heard horns blown.

QUESTION. From the house?

ANSWER. Yes, sir.

QUESTION. Were you near enough to hear all that passed between Hanway and Mr. Kline, (the conversation)?

ANSWER. When I approached him he was talking in a loud tone which I distinctly heard, what I have stated before.

QUESTION. What is the nearest point you ever attained while they were conversing, Hanway and the Marshal?

ANSWER. I think I had approached twice within may be fifteen steps.

QUESTION. Were Kline and Lewis on the other side of the bars, or where they the side of the house?

ANSWER. They were standing, as it were, in the mouth of the lane, on the other side of the bars.

QUESTION. You say you saw some white men running over the fields, how many do you suppose?

ANSWER. Some six or seven.

QUESTION. Appear to be as many as that?

ANSWER. I should suppose there was.

QUESTION. Where did they run from?

ANSWER. I think from the drean or creek.

QUESTION. Were they nearer to Parker's house than the creek?

ANSWER. Not that I know of.

QUESTION. Were you near enough to identify whether they were white or yellow?

ANSWER. I think they were white men, at that time that was my impression. I think I saw one drop his hat, which I recognized as a white man.

QUESTION. Did you see any negroes riding up on horseback?

ANSWER. I saw several of them riding.

QUESTION. Were they armed, sir?

ANSWER. Yes sir, I think they were.

QUESTION. You say you saw Noah Buley?

ANSWER. Yes, sir.

QUESTION. Did he run from or towards the house?

ANSWER. He was running from the house.

QUESTION. Did he come on horseback?

ANSWER. I do not know, but I saw him come in that direction.

QUESTION. Did you see any other of the slaves?

ANSWER. Not that I recollect.

QUESTION. He did not come out of the house so far as you saw?

ANSWER. No, sir.

QUESTION. I do not think you stated with regard to the wounds of Dickenson Gorsuch?

ANSWER. He was laboring from a hemorrhage, and the frothy appearance of the blood showed it was impregnated with air, passing through the air cells.

QUESTION. He bled out of the mouth?

ANSWER. Yes, sir, and this proved conclusively his lungs were injured. He expectorated clots of blood I think on Sunday morning.

Cross-examined by Mr. Stevens.

QUESTION. At the time that you heard the conversation between Kline and Hanway, Mr. Lewis was there, I think if I understand you right?

ANSWER. I think so, sir.

QUESTION. They were not at the bars but up at the mouth of the short lane as it intersects the long lane?

ANSWER. They were about the bars. I cannot answer the question any more.

QUESTION. I understood you to say they were in the lane?

ANSWER. I said they were on the bank.

QUESTION. I want to know how near the mouth of the lane they were?

ANSWER. I think between the bars and the lane, I mean the long lane and the mouth of the short lane.

QUESTION. It is about fifteen or eighteen yards from the bars to the mouth of that lane?

ANSWER. I don't know, sir.

JUDGE GRIER. It can be accurately ascertained.

MR. STEVENS. How many feet is it gentlemen?

MR. LUDLOW. Forty-three feet from the mouth of the lane to the bars.

MR. STEVENS. Then I understand you that the colored persons who were there, were on the other side of the long lane.

ANSWER. I took that to be from the position I occupied.

QUESTION. To whom did Mr. Hanway and Lewis address their conversation? With whom were they conversing?

ANSWER. They were conversing as far as I saw with the Marshal.

QUESTION. And with Kline I suppose?

ANSWER. Well he was the only Marshal we had, so of course I mean him.

QUESTION. He is not the Marshal?

ANSWER. Well, he was the deputy.

MR. CUYLER. He was not even a deputy?

QUESTION. You mean Mr. Kline?

ANSWER. I understood he was the Deputy Marshal, whether he was or not, I don't know.

QUESTION. I understand you, before that, you went up to call Mr. Kline. Did you see Hanway at that time?

ANSWER. He was standing, sir, at that time between the bars and the branch.

QUESTION. You mean, down the long lane?

ANSWER. Yes, sir.

QUESTION. How near to the mouth of the short lane?

ANSWER. He had passed down the long lane.

QUESTION. Near the branch?

ANSWER. No, sir, about midway, with his face towards the house.

QUESTION. Hanway, you are speaking of?

ANSWER. Hanway, I am speaking of.

QUESTION. On horseback?

ANSWER. Certainly he was on horseback.

QUESTION. What is the distance from the mouth of the short lane, down to the creek?

ANSWER. I don't know whether he was midway, but I suppose about that. That was my conclusion at the time.

MR. G. L. ASHMEAD. About 640 foot.

MR. LUDLOW. Somewhere thereabout.

MR. STEVENS. Where were this party of negroes that had been standing on the other bank opposite the mouth of the lane, at the time you went to look for Mr. Kline?

ANSWER. They had passed up.

QUESTION. That was before you went up?

ANSWER. Before I came in that direction, I saw Kline.

QUESTION. They had all passed down?

ANSWER. They had passed up.

QUESTION. Towards the house?

ANSWER. Towards the house.

QUESTION. But there had no firing taken place?

ANSWER. Not that I heard.

QUESTION. Well now, sir, from the time you escaped over the bars out of the short lane did you see any firing in the long lane?

ANSWER. I might certainly. I heard firing.

QUESTION. I mean before you retreated.

ANSWER. After I went down for Kline I returned, I stated, and another party surrounded me, and it was out of that party I walked. They shot my uncle about that time.

QUESTION. You misunderstand me. From the time you looked for the Marshal until you retreated did you see any body firing in the long lane?

ANSWER. I heard no firing in the long lane. My attention was not directed to the long lane.

QUESTION. Did you hear any firing in the long lane.

ANSWER. My attention was not directed there and of course I did not hear.

QUESTION. I did not ask where your attention was directed, I asked if you heard any in the long lane?

ANSWER. I stated I did not.

QUESTION. Well, that is about the amount of it. You speak of retreating and overtaking Hanway beyond the Creek, which, I suppose was up towards Rogers' house, was it not?

ANSWER. Yes, sir.

QUESTION. Have you said to anybody after that transaction that Hanway, when you were pursued, turned round and tried to stop the negroes, and did turn a part of them back?

ANSWER. I never said, sir, that I thought he turned a part, but whether he did or not I cannot say. I never *said* he turned a part, I said it was my opinion.

QUESTION. You gave it as your opinion?

ANSWER. Yes, sir. I did at that time.

QUESTION. Have you not said that you heard him ask them, order them, or implore them to go back?

ANSWER. No, sir. I never said any thing like that.

QUESTION. Have you not said you verily believed you owed your life to Mr. Hanway?

ANSWER. I never used those terms.

QUESTION. Have you not in substance said you believed it?

ANSWER. Believing it and saying it are two different things. I said he might have turned a part of them back, and saved my life in consequence of that being the fact.

QUESTION. Have you not said to any person you believed you owed your life to Mr. Hanway?

ANSWER. No, sir; I never said any such thing.

JUDGE GRIER. What did you say?

ANSWER. I said I did not know; but when he turned round, he turned back a part, and to which I might attribute my life.

QUESTION. Did you never tell Squire Dickson you believed you owed your life to Hanway?

ANSWER. I don't know him.

QUESTION. I speak of a gentleman living at Christiana?

ANSWER. I don't know that I ever saw him.

QUESTION. Did you ever go up in the cars from Christiana, when you met a gentleman and conversed with him on this subject?

ANSWER. I do not recollect.

QUESTION. Then you don't know that you told Mr. Dickson what I stated?

ANSWER. I don't know it, sir.

QUESTION. Did you tell Dr. Patterson?

ANSWER. No, sir, I did not. I have stated to Dr. Patterson as I have stated to the Court.

JUDGE GRIER. What did you state?

ANSWER. I said it was my opinion, and I gave it as my opinion from the first time I mentioned it, and every time I have ever spoken about it.

MR. STEVENS. You now give it as your opinion?

ANSWER. I gave it as my opinion then.

JUDGE GRIER. That turning back had saved your life?

MR. STEVENS. Turning back the negroes.

JUDGE GRIER. I understood he had expressed his opinion that the turning back of the prisoner had saved his life?

MR. STEVENS. He said the turning back of the negroes.

QUESTION. Now, sir, have you told anybody that you believed that Kline was a coward, and left the ground, or there would have been no firing and no mischief done.

ANSWER. Never, sir. I never said so.

QUESTION. Did you not tell J. G. Henderson so, or words to that effect?

ANSWER. I do not recollect having any conversation with him about that.

QUESTION. Did you, in his presence?

ANSWER. No, sir.

QUESTION. I am speaking of what you said at Levi Pownell's.

ANSWER. I cannot tell what I said on the subject. Whether he was present, I do not know.

QUESTION. I ask you whether you did not distinctly say that Kline was a coward, and had left the ground, or this would not have happened?

ANSWER. No, sir; I never said so.

QUESTION. Did you say that the whole difficulty or at least the fatal part of it arose from the imprudent conduct of your uncle?

ANSWER. I might have said it, sir, and I considered it imprudent in him in going into the fight.

QUESTION. You know Mr. Lewis Cooper, you have seen him I believe. Did you say in his presence that the Marshal was a poor thing, and ran from the ground on the first intimation of danger?

ANSWER. No, never, sir. Never, sir.

MR. READ. I will ask you in addition to Mr. Stevens, to state, whether you did not say to Lewis Cooper, on the next day after the riot at Levi Pownell's house that Kline was a monstrous poor thing, that you had no confidence in him, whatever, and that he ran on the first intimation of danger.

ANSWER. I do not, sir. I did not, I should say.

MR. BRENT. About the turning back of these negroes. I understand you to say the most dense portion of them who were pursuing you, turned back after Hanway said something to them, but the portion that was nearest to you only ceased in the pursuit, after that firing and beyond that point?

ANSWER. Yes, sir. I received a shot after that time some hundred and fifty yards beyond that point, and it was beyond that point that Joshua Gorsuch received a severe blow over the head?

MR. BRENT. Then sir, you expressed your opinion that if he had effected turning the vanguard of them back, it might have saved your life?

ANSWER. I thought that if the larger portion had not turned back, they might have pursued us further.

QUESTION. Was he not near enough to Joshua Gorsuch to take him on his horse?

MR. STEVENS Objected to, on the possibility of doing a thing.

ANSWER. I considered there was sufficient length of time to have taken him up if he thought proper.

MR. BRENT. You say that his reply to you was that he could do nothing for you?

ANSWER. Yes, sir, that is the remark as near as I can recollect.

QUESTION. Did you hear Hanway at that time on the ground or any other place use language to restrain the colored persons.

MR. STEVENS. Objected to. Let him state what he did hear; I do not like such insinuations with a witness.

MR. BRENT. As far as I can say, there is no insinuations on the part of counsel, and the remark of the counsel on the other side is unwarrantable It was asked by the other side to put the question in another way, and I merely modified it to suit their convenience.

MR. LEWIS. I beg leave, may it please the Court, to submit an objection to this form of examination altogether. The witness has already stated that he did not hear what Mr. Hanway said. Is not that, if the Court please, enough, and is he now by the manner in which the question is to be put, to have a different meaning insinuated into the jury-box.

MR. STEVENS. The Court will allow me to suggest this is examination-in-chief, and not in answer to any question we have asked.

MR. BRENT. The objection to the question is that it was leading, and when suggested it should be put in another form, I did so. A suggestion came from the other side of the table, that that was not the proper form in which to put the question. The counsel who spoke last, Mr. Lewis, is certainly mistaken. The witness said he did not hear all the conversation, and non constat that he might have heard other conversations during different parts of the drama. I, therefore, ask to put the question.

MR. READ. I think this difficulty is, that the United States have examined this witness in-chief, and that nothing they now ask grows out of our cross-examination. After they have gone through one examination-in-chief, another cross-examination is injurious to the progress of this cause; and in this particular instance the proper mode for the United States is to exhaust their questions in the first instance, and then not to commence on a new point, after the cross-examination.

JUDGE GRIER. The counsel who last spoke, has certainly stated the general rule correctly; where a party may have overlooked a point, he then may have leave to ask it again. A witness may have stated certain parts of a transaction and omitted certain other parts, the counsel may then ask if he has any thing further to say.

JUDGE KANE. I do not know whether a part of the testimony of this witness was given in cross-examination, or in his examination-in-chief; that part I mean, which spoke of the retreat of the witness in company with Hanway. The action or manner of Mr. Hanway may have kept the negroes at bay. If so, the question having been asked, what did Mr. Hanway say then, and the witness having replied he did not hear, and having afterwards in answer to another question from the prisoner's counsel, said that it was his opinion that it might have had the effect of saving his life by arresting the pursuit, it might be legitimate then, for the counsel for the prosecution, again to ask whether any thing had been heard from him which could have influenced the retreat of that body.

MR. CUYLER. Then your honor confines the question to that particular time.

JUDGE KANE. Or before, if it could have influenced that retreat.

MR. BRENT. I wish to understand the extent to which the Court will allow me to go. The cross-examination brought out the fact, that the witness expressed an opinion that in consequence of Hanway's turning round, that a portion of them might have turned back—and that that might have had the effect of saving his life.

To rebut that opinion of the witness, I desire to know whether the witness had heard Hanway at any time during this transaction, use any remarks for the purpose of restraining them.

MR. READ. That will cover all the ground, and will take us back to the commencement,

MR. BRENT. It is to repel the inference.

MR. STEVENS. It is not possible that anything he might have heard, could have influenced him in any opinion. It is new matter to us. He is not to give the reasons why he formed it, and the reasons he ought not to have formed it.

JUDGE GRIER. That is just what they ought to do.

MR. BRENT. Does the Court say I can ask the question.

JUDGE GRIER. Yes, sir.

MR. BRENT. State if you heard any such conversation to restrain the negroes from Hanway?

ANSWER. I did not, sir, at any time.

QUESTION. Where did you first see him, sir, after your escape out of the long lane?

ANSWER. He was then standing at the point I stated. He was stationary.

MR. COOPER. Was Hanway between the larger party of negroes that were following you at the time you speak of the conduct that probably saved your life?

ANSWER. We were in the front of Hanway; the dense mass was behind.

MR. COOPER. That is all.

MR. G. L. ASHMEAD. Will the marshal be good enough to send for Mr J. M. Gorsuch.

On motion of Mr. G. L. Ashmead, the witnesses who had been examined were ordered to leave the court room.

J. M. Gorsuch, sworn.

MR. G. L. ASHMEAD. Did you reside in the State of Maryland, near the late Edward Gorsuch?

ANSWER. I was neighbor to the late Edward Gorsuch, on the adjoining farm.

QUESTION. Are you a relative?

ANSWER. I am a cousin to Edward Gorsuch.

QUESTION. Did you accompany Mr. Edward Gorsuch, Mr. Kline, and others to Christiana, in the month of September last?

ANSWER. I did.

QUESTION. Did you reach Parker s house on the morning of the 11th of September last?

ANSWER. I did.

QUESTION. After you were up there, sir, did you hear any instrument of any kind?

ANSWER. I heard the sound of a bugle, as I supposed, some ten minutes, may be, before I got there; it might not have been quite so much.

QUESTION. From which side did the bugle sound, the right or left?

ANSWER. It appeared to be to my right.

QUESTION. Will you be good enough to state to the court and jury now, all that you recollect of what was said and done upon that occasion from first to last? Go on in your own way without any question being asked.

ANSWER. We went on then to the bars that led to Parker's house; we heard some one singing; some one observed, "Here they are;" part of us jumped over the bars and after them; I myself did not see them, but immediately pursued to the house. When I got to the house, Edward Gorsuch told his servant, Nelson, to come down and give himself up, that he had seen him, and they replied several times that he was not there. Edward Gorsuch observed, that he had seen him, he might as well come down and give himself up, for it would be better for him. We staid outside of the door, and there was a piece of wood thrown down and struck me on the top of the shoulder. I heard Dr. Thomas Pierce then observe, that he was struck somewhere about the eye, (here) and made it black. I did not see that. Shortly after there was a fire from the window above; the blazing apparently of the powder was not more than that far (witness describes the distance between his hands) from Edward Gorsuch's hat. Edward Gorsuch observed, you have shot at me; and demanded that they should give his property up out of that house. There was a great many words used which I dont remember now, but not of any material importance that I can recollect. There was talking from both sides. Parker said that he was not there; I observed, "possibly you dont know them by that name;" says I, "these persons have assumed fictitious names; and then the marshal was ordered to read the warrants to them. The marshal did so. Whether the time given them to make up their minds to come down, was heard or not I do not remember myself. There was a man rode up to the bars on horseback I didn't notice him when he first came, that I recollect of, but saw him there. I observed to the marshal, that he was there. The marshal went to him, and while he was there, he called to me. All this time, there had been a number of colored persons assembling in the short lane, and as I was making my way to the bars, I discovered a company of them coming; they appeared to come in gangs of fifteen or twenty. The marshal, says he to me, tell your cousin to come on, that this man I hold responsible for them, provided he is worth it, and his property is secured to him.

QUESTION. What man?

ANSWER. I allude to Mr. Hanway. I returned then back again, to him immediately and says I to Edward; the Marshal says, come on now, your property is secured to you, provided this man is worth it. I believe he was just in the act of starting as a colored man struck him on the head with a club. As soon as he had recovered from his position of falling, for he had reached the ground, I believe on his hands and knees; he was struck several times, one after another, and they apparently gave him no time after that. I discovering that they were intending to kill the whole of us, and especially Edward, and as I did not like to see him murdered in that state, I aimed to shoot one of them. My cap burst and did not go off. I then was beat severely, I believe the first one that struck me I aimed to shoot him. I didn't see whether it took effect, but am of opinion that I must have shot him, I didn't see it take effect hows'ever, all that time I became somewhat turned round. All this time a thought flashed over my mind that I should run, I didn't have any idea of getting farther from where I stood, for I found they were determined to kill me. I run, and they made after me, and as I was going towards the bars I saw Dickinson Gorsuch, son of Edward Gorsuch, go down towards his father; I said nothing to him. I didn't expect to see him come away from there alive at that time.

I jumped over into the lane then, threw my eyes both ways immediately and discovered on the right, a number of colored persons, and on the other side, some whites, but didn't notice who. I ran down, then, through the long lane, they hollaring from behind me, "kill him," "kill him," and every one apparently that could get a lick at me, struck me. There was a man come riding by and I asked him to let me get up behind him, I said for God's sake don't let them kill me. Shortly after that I appeared to receive a very severe blow on the head, it appeared to be very solid. I had on one of those fur hats, that fit close to my head, it didn't get knocked off I believe until I received the last blow, there was two handkerchiefs in that hat and it was lined, and if it hadn't been the case, I should not have been here to-day; I must have got over a dozen blows. I was struck on the arms, over the breast, on the head and down the back, and I believe that after I had got through the negroes over the field, I came up to a man, I have understood his name was Rogers, I saw that man standing aside of the house, and I didn't like his appearance at all; I then retreated, took along the woods and somewheres near opposite the lane, I cannot say which though, I don't reccollect, I didn't take notice at the time, I fell in with Marshal Kline, the Marshal told me—

MR. BRENT. Don't say anything the Marshal told you.

WITNESS. I then went on to the store and bought myself a hat.

MR. COOPER. Whose store?

WITNESS. Well, the young man,—let me see, I forget,—over along side of the lane going to Christiana and Penningtonville,—Dare was the young man. I got acquainted with him there. I asked some of them to carry me on to Penningtonville. There was a man standing there, he said he would do it for a dollar. I asked him how far, he said he supposed it would be a mile. I thought it a short mile, however.

MR. STEVENS. The man at the door, I should take him to be Mr. Kline, I should think it was him if I didn't know that the former witnesses were all absent. I find it is Mr. Kline; he has left.

WITNESS. He agreed to take me for a dollar, I gave him the money and he returned it back and

said he would not take it. I went on to Penningtonville and staid there for some time. I got in the cars and went on immediately to Columbia. I suppose I arrived in Columbia that same morning, about 11 o'clock. I didn't keep the time, but I should judge from the fact of being in Wrightsville, and eating my dinner there before 12 o'clock; that is the only account I can get of the time I arrived in Columbia. Went on to York the same day and stopped there with some of my friends. The young man that superintended the cars, I was very well acquainted with, he wanted me to go home with him. I observed to Mr. Merryman that I could carry nothing definite home about my friends, and I wouldn't go till I could. I told Mr. Merryman not to mention any thing to my friends about me, I knew it would make them very uneasy. He did do so, however, until it was reported that I was killed, and then he wrote them and told them it was not so, that he had seen me on to York about—

MR. G. L. ASHMEAD. I will ask you a few questions now sir. Did you see any of the slaves of Edward Gorsuch, upon that occasion, that you recognized?

ANSWER. I did.

QUESTION. Who?

ANSWER. Joshua Hammond; Edward Gorsuch was then addressing him, and the words were these, "see," says he, "it is not worth while to go on that way." He was then going on like a savage.

QUESTION. Did you see any other slave of Edward Gorsuch upon that occasion?

ANSWER. I saw one, I took him to be Noah Buley. I could not swear positively that it was Noah Buley. I knew him and I took it to be him, he was coming along with a number of others.

QUESTION. At the time you saw Edward Gorsuch talking to Joshua Hammond, where was he standing?

ANSWER. Not noticing particularly, I hardly know where they were standing, and of course I did not expect to give an account of it. It was in the lane, and immediately after that he was knocked down.

QUESTION. Was that just before he was knocked down?

ANSWER. It was some few minutes before that.

QUESTION. Have you any doubt that it was Joshua Hammond, one of his slaves?

ANSWER. About it being his slave? not a bit of doubt. I knew him and have no more doubt, than a doubt that I stand here.

QUESTION. Did you hear any horns blowing that morning?

ANSWER. Several times blown from the window.

QUESTION. Did you hear any other horns blown around the country?

ANSWER. Why, I can't say I did or I did not, but it appears to me there was some blown, but I didn't notice them particularly, more than the bugle that was blown before we got there.

QUESTION. The horn that was blown from the window, that was blown several times, was that blown before the negroes had assembled?

ANSWER. Yes, sir, it appeared to me, one party of the negroes was formed at the bars before the horn was blown.

QUESTION. Can you give us any idea Mr. Gorsuch, how many negroes were inside of that house?

ANSWER. I do not know only from hearsay.

MR. ASHMEAD. Not what you heard said. You do not know then of your own knowledge how many were in that house?

ANSWER. No, sir.

MR. ASHMEAD. Mr. Gorsuch, about how many negroes were there altogether, upon that occasion, from first to last?

ANSWER. I didn't see the number in the long lane until I were running, I passed my eye over in a minute, there appeared to be a great many in the long lane, and the nearest I could come to the number is a hundred and fifty or thereabouts.

QUESTION. How were the negroes armed?

ANSWER. Various ways, I saw one with a stone, a number with clubs, and I believe one with a corn cutter or scythe, or something to that effect. I might have saw guns, but I dont recollect of seeing guns. I might have saw them but not noticed them.

QUESTION. Did you see any firing at that time?

ANSWER. I heard no firing, only the fire that was from the window, and the firing after that commenced, that murdered Edward Gorsuch.

QUESTION. Then you heard the firing after they had commenced the murder of Edward Gorsuch?

ANSWER. Yes, sir.

QUESTION. Mr. Gorsuch, what was the condition of your mind after you were beaten upon that occasion?

ANSWER. When I received the last blow, I would not have known myself that my mind was injured, had it not have been, that I told the Marshal that now I am five or six miles from home, and what road to go home, I didn't know, I appeared to have lost all knowledge of the railroad, whereabouts it run, and I thought I would hire a horse and wagon to go on to Baltimore, and then I would be able to get home from Baltimore. This is a fact will satisfy me, that I was knocked out of my mind, if it was not for that, I should not willingly believe it.

QUESTION. How near were you to Mr. Edward Gorsuch when he was first struck?

ANSWER. I suppose as close at least as I am to Mr. Lee.

QUESTION. Did Dickinson Gorsuch advance to the rescue of his father?

ANSWER. It was my opinion he was going there, he didn't tell me so.

QUESTION. After you had seen him advance towards his father, did you see anything which took place with regard to Dickinson?

ANSWER. The last time I saw him was on that occasion.

QUESTION. Mr. Gorsuch, be good enough to look at the prisoner, and say, whether that is the man you saw on the horse at the creek?

ANSWER. I did not notice the countenance of the man, when he passed me on horseback the other side of the creek, I saw the horse was in a gallop if I recollect, I asked him if I might get

up behind, what the reply was I know not, or whether there was any made.

QUESTION. I have asked you to look at the prisoner and say whether that is the man who was on the horse?

ANSWER. I didn't notice the man when he passed me on horseback, but I know that a man did pass me in the lane, on horseback.

QUESTION. When you asked the man to let you get up on the horse, what did the man say?

ANSWER. I didn't understand him to say any thing, there was a great deal of confusion.

QUESTION. Were you fired at as you were running?

ANSWER. I could not state it myself, any more than what others have told me.

QUESTION. Did you hear any conversation at all between Mr. Hanway and the Marshal?

ANSWER. I was not close enough to them to hear any conversation.

QUESTION. Did you hear any conversation at all, at any other time, that Mr. Hanway had with the Marshal?

ANSWER. No, sir.

QUESTION. You did not?

ANSWER. No, sir

MR. COOPER. Mr. Gorsuch, will you state whether there was any change in the conduct of the negroes, after the man on horseback came up?

ANSWER. The colored people in the house stated they felt like dying. The Marshal gave me an order to proceed to the Sheriff for twenty men; he did this just in a sham way, to try to frighten them. I observed to the Marshal that it was no use, it would only make them worse if we didn't succeed. I then went on to the other side of the race. I then thought I heard some one call me. I returned back with the expectation that they had probably given up. After the man on horseback came up, they appeared to be inspired, and I thought it made a material change.

MR. COOPER. What was done?

ANSWER. They appeared to rally.

QUESTION. That was after the man came up?

ANSWER. After the man came up. Yes, sir.

MR. BRENT. After you returned home, were you confined to your bed from your injuries?

ANSWER. Yes, sir.

QUESTION. How long?

ANSWER I didn't take particular account of the time. I was not able to attend to business for a month after the occurrence, I suppose. I was taken worse after returning home; my pains became more sharp round the wound on the head, and I believe I am severely affected now from the injuries I sustained on that occasion.

MR. BRENT. State at what period of time you were taken sick, and how long you remained so.

ANSWER. I cannot state this exactly, I suppose some four or six weeks. I suffered more or less from the head. My nervous system appeared to be very much impaired, the Doctor dieted me.

QUESTION. Are you conscious whether you fell, when you received the last blow you speak of?

ANSWER. No, sir. I have been told that, I was knocked down several times.

MR. BRENT. That is no evidence. That is all.

No cross- examination.

Mr. Dickinson Gorsuch was called and sworn.

MR. G. L. ASHMEAD. Are you a son of the late Edward Gorsuch?

ANSWER. Yes, sir.

QUESTION. Were you with your father on the morning of the 11th of September last, at Parker's house, near Christiana?

ANSWER. Yes, sir.

QUESTION. When you went up to Parker's house, did you hear any instruments of any kind?

ANSWER. I heard a horn blown.

QUESTION. About how long was that before you reached Parker's?

ANSWER. About a quarter of an hour, I suppose.

QUESTION. Will you be good enough now to commence, and in your own way, without interruption, state to the Court and jury, slowly and distinctly, all that occurred upon that occasion?

ANSWER. As we came near the house, we saw a negro come out at the lane; they stopped. Dr. Pierce and I were behind. Dr. Pierce and I got over in the orchard, and ran across to the house. My father got to the house before we did. We went behind the house. We stood there at the house a few moments, and heard the negroes up stairs. Dr. Pierce and myself went round to the back part of the house, to keep the negroes from getting out of the windows. While I stood there, I heard a gun fire. I went round to the front part of the house again. Dr. Pierce told me they had fired at my father. I went round to the back part of the house again, and we guarded it. I came round again, and I got up on a small house in front of the other house, to watch around to see if I saw any negroes coming. I was on this house, when one of the negroes asked for time to consider. The time run out; they asked again. About that time I saw a man at the bars on a horse. The Marshal's attention was called to him by Joshua Gorsuch. He was told there was a man at the bars, and to go and summons him to assist. Then they were all away from the house except my father and myself; before this the negroes seemed as if they would have given up. My father said to me, they had better have gone up before; now they seemed to be determined. I went towards the bars; about half way nearer the bars than the lane. The negroes seemed to have formed into another squad. I saw the man on the horse read the papers, and then returned to the house. I saw the negroes come out, One of my father's servants were there; Philip Pierce's boy. There were two that I recognized; they came shouting around me, and one that was in the house said, "there he is! take him;" that was Josh. They were shouting around me. I raised my revolver, and told them if they touched me I would shoot them. I told my father we had better go, for

they intended to murder the whole of us. He said it would not do to give it up that way. We were at the house. I then walked nearer to the bars. While I was there, one of the men passed me. He did not look at me. Before this, I saw him riding on a horse; he had a gun when he came. It was soon after this I saw them strike my father. They struck him with clubs. I went back to him, as near as I could get, and put up my revolver to shoot at them. I was struck across the right arm with a club; and about the same time, I was shot in the side. After that, I started out of the long lane, and I met the Marshal. He led me to the woods. I laid down there on the ground. I was bleeding very much in the side and arm, and was spitting blood. I saw a man standing there, and I asked him to hold my head. I asked him several times, as I felt very weak, to hold my head; he wouldn't do it. I afterwards asked him to go and get me some water. After asking him several times, he went and got me some water. This man I recognized in the prison as Mr. Scarlett. I don't know how long I laid there, before some persons in the country came and took me to Mr. Thomas Palmer's. I laid there three weeks and one day before I was able to return home.

MR. G. L. ASHMEAD. About how many negroes were there, in and about the house and in the lane upon that occasion altogether?

ANSWER. I know there were more than eighty; I only saw those that were in the short lane.

QUESTION. You think there were about eighty, then?

ANSWER. Yes, sir.

QUESTION. Were they armed?

ANSWER. They were armed with guns, clubs, revolvers, and swords.

QUESTION. You said the negroes appeared encouraged and confirmed; what made them encouraged and confirmed?

ANSWER. The persons were looking out of the windows, and they said there was some person at the bars, on a horse, and shouted. I didn't understand who they said it was.

QUESTION. Was it a white man or a black man?

ANSWER. A white man.

QUESTION. Was he on horseback or not.

ANSWER. He was on horseback.

QUESTION. Did you look at him sufficiently to identify him?

ANSWER. I did.

QUESTION. Are you able to say whether the prisoner is the man?

ANSWER. Yes, sir.

QUESTION. Is he the man

ANSWER. Yes, sir.

QUESTION. Did you recognize more than one of the slaves of your father there upon that occasion?

ANSWER. No, sir.

QUESTION. But one?

ANSWER. Yes, sir.

MR. G. L. ASHMEAD. Be good enough to give us their names?

ANSWER. Noah Buley and Joshua Hammond.

JUDGE GRIER. Noah was not there when you first went—he came on horseback?

ANSWER. Yes, sir.

MR. G. L. ASHMEAD. With a gun.

QUESTION. Had your father any arms in his hand when struck?

ANSWER. I did not see whether he had or not.

QUESTION. How far were you from him when they commenced to kill him?

ANSWER. I was about ten feet off, I suppose.

QUESTION. Had you your face or back towards him?

ANSWER. I had my side—I did not see them when they commenced their attack on him.

QUESTION. When you first saw him after the attack commenced, what were they doing to him?

ANSWER. Striking him over the head with clubs.

QUESTION. You have said that you advanced towards him at that time—were you attacked, then, before you had reached him?

ANSWER. Yes, sir—I could not get to him for the crowd around him.

QUESTION. What became of your pistol?

ANSWER. My pistol was knocked out of my hand.

QUESTION. How many shot did you receive about your person on that occasion?

ANSWER. About eighty, I think.

QUESTION. Where?

ANSWER. In this arm (right) and side, and here, (in the thigh), and in this arm (left).

JUDGE GRIER. You don't mean different shots from different guns, but that number of shots were put in you?

ANSWER. Yes, sir.

QUESTION. Do you bear about your person now the marks of the wounds, on that occasion?

ANSWER. Yes, sir.

QUESTION. How long were you confined by the wounds on that occasion?

ANSWER. I was there at Mr. Palmer's three weeks and one day.

QUESTION. After you reached Parker's house, did you hear any horns blowing?

ANSWER. Yes, sir—I heard them in the house.

QUESTION. How often?

ANSWER. I don't recollect how often—but I know the horns blowed for some time—I don't know whether it was more than once there.

QUESTION. Did you hear any from the surrounding country?

ANSWER. Not that I recollect?

QUESTION. Did the horns from the house blow before or after the negroes assembled?

ANSWER. Before.

Examined by Mr. Brent.

QUESTION. Do you recollect if you passed any blood from your mouth or lungs?

ANSWER. I did.

QUESTION. How long did it continue?

ANSWER. Till I got the water.

QUESTION. Did you pass any coagulated blood afterwards?

ANSWER. I believe I did.

QUESTION. Do you feel any inconvenience from the injury yet?

ANSWER. Yes, sir, I have a pain in my side—it hurts me to take a long breath, and it hurts me very much to cough.

QUESTION. Did you see any thing of Nelson there?

ANSWER. No, sir, I could not recognize him. I saw the man who ran to the house, that my father said was Nelson.

QUESTION. I understood you to state that your father and yourself were alone at the house—the rest of the party having gone towards the bars, in consequence of a change in the conduct of the negroes, stamping the floor and making a noise, that your father made a remark to you that it was worse for you that you had waited?

ANSWER. Yes, sir.

QUESTION. Fix, if you can about what period that was, in reference to Mr. Hanway's appearance at the bars.

ANSWER. It was after he had come to the bars.

QUESTION. How long?

ANSWER. I dont know what time that was.

QUESTION. This change in the conduct of the colored persons in the house took place shortly after Hanway came to the bars—and your father made this remark to you at that time?

ANSWER. Yes.

QUESTION. Did you hear any conversation with Hanway after that time?

ANSWER. I heard them talking. I dont recollect what they said.

No cross-examination.

Nicholas Hutchings, called and sworn—Examined by Mr. G. L. Ashmead.

QUESTION. Were you a neighbor of the late Edward Gorsuch in the State of Maryland?

ANSWER. I was.

QUESTION. Did you accompany Mr. Edward Gorsuch on the morning of the 11th of September last to the house of Parker?

ANSWER. I did, sir.

QUESTION. On the way up and when you came near that house did you hear instruments of any kind?

ANSWER. I heard a horn blowing.

QUESTION. In what direction did the sound come as you went up: to your right or left?

AMSWER. It came from the right.

MR. G. L. ASHMEAD. Go on in your own way and state all that occurred upon that occasion from first to last, as far as you recollect it, when you came to the house.

WITNESS. When I came to the house Kline asked for the landlord, and I told him what we came there for, and that he was an officer.

MR. G. L. ASHMEAD. You have said that when you got to the house the Marshal and some one else went in?

WITNESS. Yes, sir, and Kline told him that he was an officer, and came there to make arrests. And Mr. Gorsuch told him he heard his slave—he heard his voice, and said if he would come down and go home with him, he would forgive him for the past. There was something thrown from the window and struck Pierce.

In a short time afterwards there was a gun fired from the window at Mr. Gorsuch; Kline read his warrants and authority two or three times. A short time after that there was a horn blowed from the house; and they asked for some minutes to consult, and we allowed them ten minutes, and they asked for a longer time and we gave them five minutes.

In the meantime there was a gentleman rode up to the bars; the marshal went to him, and called on him to assist; I did not hear his reply. He gave him his warrants, his authority, to read. I was some distance off. I didn't hear his reply. I saw him have in his hand the warrants; I saw him hand them back to him; and a short time after there was another gentleman came up. The officer handed them to him, and I saw him pass them back again to Kline. I think at that time there was some twenty or thirty negroes came up. They were all armed with guns, scythes, swords, and other weapons. Kline called on us to leave the house, and he said he would hold these white men responsible for the slaves. I proceeded out into the long lane and the rest followed me, and they stopped in the short lane, and I proceeded to the long lane. Kline asked me to follow one of these men, which I did some short distance; we retured into the woods, and I stopped.

QUESTION. Which man was that?

ANSWER. Lewis.

JUDGE GRIER. Kline told you to follow him?

ANSWER. Yes, sir, to see where he went. When I was following him, the negroes rushed towards the house, and I heard a great firing, and after that I saw them run Pierce and Gorsuch down the long lane. Dickinson Gorsuch came up into the woods some short distance from me, all bleeeing and suffering very much; and I made my escape.

MR. G. L. ASHMEAD. Did you look at the man at the bars?

ANSWER. I went towards the bars, he turned and rode past the platts; he didn't go very far.

QUESTION. Did you or not see his face?

ANSWER. No sir, I did not.

QUESTION. Was he on foot or on horseback?

ANSWER. On horseback.

QUESTION. About how many negroes were there upon that occasion altogether?

ANSWER. One hundred and fifty I suppose, or more.

MR. G. L. ASHMEAD. You have already said that they were armed with guns, clubs, corn-cutters, scythes, etc.

ANSWER. Yes, sir.

QUESTION. Did you hear a gun fired out of the window of the house?

ANSWER. Yes.

QUESTION. Who was it fired at?

ANSWER. It was fired right over old Mr. Gorsuch.

QUESTION. At the time you saw the negroes in the lane standing near Hanway and the Marshal, what were these negroes doing?

ANSWER. Loading their guns.

QUESTION. Did you see there upon that occasion any of the slaves of Edward Gorsuch?

ANSWER. I did, sir.

QUESTION. State who they were.

ANSWER. One called Noah Buley. I didn't see any others.

QUESTION. You feel certain as to Noah Buley?

ANSWER. Yes, sir.

QUESTION. Where was it that you first saw Dickinson Gorsuch and Kline together after Dickinson was wounded?

ANSWER. They were up in the woods.

QUESTION. You first saw them up in the woods?

ANSWER. Yes, sir. Dickinson coming up into the woods and Kline had hold of him.

QUESTION. At the time Hanway came to the bars, what was the demeanor of the negroes?

ANSWER. They appeared to be in great spirits—all of them hallooing and shouting and singing.

QUESTION. How had they appeared before he came to the bars?

ANSWER. They appeared to be rather intimidated.

Cross-examined by Mr. Stevens.

QUESTION. I think you said on a former examination that you didn't see the white men speaking at all to the negroes?

ANSWER. No, sir.

QUESTION. You didn't see them.

ANSWER. No, sir.

QUESTION. I have understood you now to say that you were up near the mouth of the lane when you saw Mr. Hanway leave that and ride down the lane?

ANSWER. Yes, sir.

Nathan Nelson, called and sworn.

Examined by Mr. G. L. Ashmead.

QUESTION. Were you a neighbor of the late Edward Gorsuch in the State of Maryland?

ANSWER. I live some six or seven miles from there.

QUESTION. Did you accompany him on the morning of the 11th of September last, to the house of William Parker near Christiana?

ANSWER. Yes, sir. I believe that was the date of the time.

MR. G. L. ASHMEAD. Now go on and state to the Court and Jury all that occurred on that occasion, from first to last.

WITNESS. From the time we started from home?

MR. G. L. ASHMEAD. No, sir—from the time you came to a short distance from Parker's.

WITNESS. What first occurred on the road from there—we heard a bugle blow, some distance from us on the right hand side of the road; and on our way there we stopped to take something to eat, and when we came near the short lane, we discovered one or two negroes coming out into the long lane, and when they saw us they run, and we pursued them to the house, and after we got to the house sometime—it was but a short time after we got there, there was a club thrown out from the window which struck Pierce over the eye. It passed over my head. There was some little skirmishing at that time—we dodged round the corner of the house. After some time there was a gun shot out of the window at Mr. Gorsuch, which went between his shoulder and head. And after that there was another club thrown from the window, and there was a gun poked out several times to shoot again. However, before this the Marshal had read his warrant for the arrest of the runaways.

QUESTION. What took place then?

ANSWER. There was some time given for them to consider whether they should give themselves up or not, and they agreed on the time—I don't recollect how long—five, ten or fifteen minutes. I don't recollect the exact time, and in the meanwhile I think there was a man rode up—I know there was, and at that time the negroes seemed to rejoice at it, they made a jumping and a great noise. Not long afterwards there was a parcel of negroes came down the lane running and making a great noise, with guns, clubs, scythes, and part of them passed—in the first place they formed a line in the lane, and the man on horseback was on the upper side; as well as I recollect, they loaded their guns there and fixed them. They staid there some time and after a while they rushed into the short lane, into the house. By that time the deputy marshal had hallooed to us to retire—he hallooed two or three times—and said he would hold that man responsible for the property, and by that time I saw the rest of them near the house—the Mr. Gorsuches. I was on the lower side of the house. They turned to leave the house and I made an attempt to get with them and there was one party between, and the Gorsuches and another party at the bars. When I got to the bars I saw several, there might be fifteen or twenty with guns and scythes. This man was on horseback, and a young man standing by the side of them, and I think, if I recollect right, that he said to me that we could not do any thing. I said I didn't think we could. I hadn't passed many steps up the lane before they commenced firing. After I got into the woods Dickinson Gorsuch came out. I didn't see anybody with him at that time—I saw Kline going from him. I was looking over them to the negroes that was running Pierce and Gorsuch. I believe that was about the last I saw of it.

QUESTION. Did you see any slaves of Mr. Edward Gorsuch there?

ANSWER. I saw one.

QUESTION. What was his name?

ANSWER. His name was Noah.

QUESTION. Noah what?

ANSWER. They call him, Noah Buley.

QUESTION. Did you see the face of the person on horseback, on that occasion?

ANSWER. I did.

QUESTION. Are you able to say whether the prisoner at the bar is that person?

ANSWER. I take him to be the man.

QUESTION. How long was it after Mr. Hanway came to the bar, that the negroes came up?

ANSWER. It was not a great while. I don't know how long.

QUESTION. Had you any conversation with Mr. Hanway?

ANSWER. I said to him or he said to me rather, that he didn't think we could do any thing, I said I didn't think we could. Those were the words as well as I can recollect.

QUESTION. Did you hear any conversation between Hanway and Kline?

ANSWER. No, sir, I was rather too far off—they were talking, but I could not understand to distinguish the words.

QUESTION. Did you hear any firing upon that occasion?

ANSWER. Certainly I did. There was a great number of shots.

QUESTION. About how many negroes were there altogether on that occasion?

ANSWER. It is a hard matter to tell. I should judge from what was there and coming in the lane, there was some 75 or 100.

QUESTION. How armed?

ANSWER. With guns, clubs, scythes and swords. I believe that was about all I seen they had.

QUESTION. Did you hear any horns blown on that morning?

ANSWER. I did, sir. I heard a horn on the road as we were going, and heard one blown after we were there.

QUESTION. Were the horns blown from the house or surrounding country?

ANSWER. From both.

QUESTION. Was the horn from the house blown before or after the negroes had assembled?

ANSWER. Before.

JUDGE KANE. You said you heard horns blown from the house and elsewhere—were they blowing at the same time?

WITNESS. No, sir, not at the same time.

QUESTION. Were they blown after each other? was there any connection between the blowing?

ANSWER. The first I heard after we got to the house, was blown from the house, and sometime afterwards—I don't recollect the time—I heard a horn blowing in the neighborhood. I thought it was an early hour for breakfast.

MR. BRENT. Was it daylight?

ANSWER. It was after daylight.

QUESTION. How long after you got to the house?

ANSWER. I don't recollect how long it was.

MR. GEORGE L. ASHMEAD. Did Kline or not, hand Mr. Hanway any papers, that you saw?

ANSWER. I can't say that he did, I was on the lower side of the house in the orchard. The trees were between me and him—I saw him talking to him and with him.

Cross-examined by Mr. Stevens.

QUESTION. You spoke of a horn you heard as you were going up—was that before you got to the mouth of the long lane?

ANSWER. Yes, sir.

QUESTION. How long were you about the house?

ANSWER. I can't tell that—I don't know how long we were.

QUESTION. An hour or so?

ANSWER. We were there an hour I should judge, anyhow—I don't know the time.

QUESTION. Tell us in what direction you heard another horn, except that out of the window of the house?

ANSWER. I can't tell that; I didn't pay much attention to it, more than I heard the blowing. One I heard was in the direction of the railroad from that house.

QUESTION. Up towards where Mr. Rogers lives?

ANSWER. I don't know where he lives.

MR. STEVENS. Up the long lane that you came down?

WITNESS. It was more towards the direction of Penningtonville. I think it was towards the railroad from the house, as well as I recollect.

QUESTION. How far from you apparently, was that horn that you heard, beside the one in the house?

ANSWER. I can't tell.

QUESTION. Can you form an idea?

WITNESS. It was a heavy, foggy morning.

QUESTION. Did you hear it distinctly?

ANSWER. Yes, well enough to tell it was a horn.

QUESTION. Distinctly?

ANSWER. Yes, sir.

QUESTION. Was it not after six o'clock when that took place?

ANSWER. I dont know what time it was, whether after or before six.

QUESTION. How do you know it was early breakfast?

ANSWER. I thought it was early breakfast when the other horn was blowing, and the one from the house.

QUESTION. I have understood you to say, that when you went out the last time towards the mouth of the lane, that Hanway was there by the bars?

ANSWER. He was out in the long lane.

QUESTION. Was he at the mouth of the short lane?

ANSWER. Yes.

QUESTION. There was another white man or boy standing with him?

ANSWER. Yes.

QUESTION. Have you seen that man or boy since?

ANSWER. Yes, the one I took to be him.

QUESTION. Was it John Bodely?

ANSWER. Yes, sir; I saw him here, and I understood that was his name; I saw him at Lancaster.

QUESTION. When Bodely and Hanway were at the mouth of the lane, hadn't Kline left?

ANSWER. He was in the lane, I think, just above.

QUESTION. But he had left the short lane?

ANSWER. I didn't see him about the short lane, but I recollect of seeing him and Hutchings together.

QUESTION. He was not with Hanway and this other man?

ANSWER. No, I didn't see him.

QUESTION. And did Kline come back again to the mouth of the lane after that, before the firing commenced?

ANSWER. I dont know.

QUESTION. Did you see him?

ANSWER. No.

QUESTION. Then you went up the long lane towards the woods?

ANSWER. I did.

QUESTION. Were not Hanway and Kline ahead of you?

ANSWER. They were.

MR. STEVENS. You have said on a former examination, as I see from Mr. Reigarts' notes, that when the firing commenced, Hanway and Kline were in or near the woods.

WITNESS. No, sir, I dont think I said that.

QUESTION. Did you not say, that when the firing commenced, Hanway and Kline were at or near the woods?

ANSWER. I didn't say that they were; Hanway and myself, I said, were near the woods.

QUESTION. Then I understand you now to say, that you have not heretofore said, that when the firing commenced, Hanway and Kline were near the woods?

ANSWER. No, sir.

MR. STEVENS. You said on a former occasion that the first you saw of Dickinson Gorsuch after that, was as he was entering the woods wounded.

ANSWER. Yes, sir.

QUESTION. And there was the first you saw Kline with him after he was wounded?

ANSWER. I didn't exactly see him with him; he was going from him in the woods; it was after the firing.

QUESTION. You didn't see Kline bring Dickinson Gorsuch up the lane?

ANSWER. No, sir, I was looking over him at the negroes running.

QUESTION. You didn't see that fact.

ANSWER. No, sir.

QUESTION. Which way did you go after the firing, and after you were in the woods?

ANSWER. Towards Penningtonville, up into the woods, and then took to the left down towards Penningtonville, when I got into the woods.

QUESTION. Did you see Mr. Lewis at all?

ANSWER. No, sir, I dont recollect of seeing him at all.

QUESTION. Then, at the time Mr. Hanway was reading the warrant, you didn't see Mr. Lewis there?

ANSWER. No, sir.

QUESTION. Do you know which went away first from the mouth of the lane, Hanway, or the white man standing with him when you went up there?

ANSWER. I do not.

QUESTION. Didn't you see them go away?

ANSWER. No, sir; I left them standing there.

QUESTION. Looking down the short lane?

ANSWER. I dont know which way they were looking?

QUESTION. Dont you know which way Hanway was looking?

ANSWER. No, sir.

Miller Nott called.

WITNESS. I affirm.

CLERK. Have you conscientious scruples to taking an oath?

WITNESS. I don't know that I have.

CLERK. Then you will please to swear.

Sworn by the uplifted hand.

Examined by Mr. George L. Ashmead,

QUESTION. Where do you reside?

ANSWER. In Sadsbury township, Lancaster county.

QUESTION. How long have you resided there?

ANSWER. Ten years last spring, I think.

QUESTION. How far from Christiana?

ANSWER. About two miles, I suppose.

QUESTION. Do you recollect the occurrences of the morning of September 11th last, at the time Mr. Gorsuch was killed?

ANSWER. Yes, sir, I recollect it.

QUESTION. Did you visit the battle ground upon that morning?

ANSWER. Yes, sir, I did.

QUESTION. How long after the occurrences of that morning was it before you reached the ground?

ANSWER. Some few minutes after the firing, before I got down on the ground?

QUESTION. Was Mr. Gorsuch then dead?

ANSWER. No, sir, he was not quite dead.

QUESTION. I do not ask you as to names, but I ask you as to number—about how many colored people did you see there upon that occasion?

ANSWER. I concluded there was between seventy-five and a hundred, was my opinion.

QUESTION. Were they armed?

ANSWER. A quantity of them were.

QUESTION. Did you hear any firing upon that ground?

ANSWER. Yes, sir, there was a good deal of firing.

QUESTION. How far off were you from Parker's house when you first heard the firing?

ANSWER. I suppose I was about two hundred yards, when the firing commenced.

QUESTION. Did you see a white man by the name of Scarlett there?

ANSWER. I saw Joseph Scarlett there.

QUESTION. Did you know him?

ANSWER. Yes, sir.

QUESTION. How long had you known him.

ANSWER. I have known him for six or seven years, and probably longer.

QUESTION. How far does Scarlett live from there?

ANSWER. About a mile and a half, I expect.

QUESTION. Was he on horseback?

ANSWER. Yes, sir.

QUESTION. Was his horse sweating or not?

MR. STEVENS. This is not a proper mode of examination.

MR. READ. Would it not be a great deal better to let this witness go on and tell what he knows?

MR. G. L. ASHMEAD. If the other side are to direct the United States how to proceed and how to examine our witnesses, then they are right in this.

MR. READ. When the witness is put upon the stand, he belongs to the whole case and not to the United States, and he is bound to swear the whole truth and nothing but the truth. The usual and proper method is to let the witness tell his own story and not to strike out what parts may be useful to the defence.

JUDGE GRIER. The usual plan is for him to narrate all that he saw, and if he omit anything to ask him the question.

MR. G. L. ASHMEAD. We have finished the examination of the witness and hand him over for cross-examination.

MR. STEVENS. Well! If they turn him over to us we will turn him out; we have nothing to say.

JUDGE GRIER. I wish to ask the witness a

question for my own information. You say you went there and found Mr. Gorsuch dying, what did you do? who removed him? or what was done for him? and what further do you know about it?

WITNESS. Does the Court wish me to tell what I know about him? what was done with him?

JUDGE GRIER. Yes.

WITNESS. We removed him from there, after there was a jury fixed, to Christiana.

QUESTION. When you found him there you remained to assist?

ANSWER. Not all the time. I helped to get Dickinson Gorsuch in a house, and then immediately returned there, and was with him when he was put in the wagon, and followed shortly to Christiana.

QUESTION. Who assisted to take him to Christiana?

ANSWER. A quantity of the neighbors. I can't recollect how many people.

MR. BRENT. The inquest was held at Christiana?

ANSWER. Yes, sir.

QUESTION. After you arrived there, were there any large parties of negroes about in the neighborhood?

ANSWER. No, they scattered very soon.

Cross-examined by Mr. Stevens.

QUESTION. You lived down towards Penningville from Parker's?

ANSWER. Yes.

QUESTION. Did you that morning hear any horn blow in that direction?

ANSWER. I didn't hear any horn—not myself.

John Nott sworn. (A boy.)

Examined by Mr. G. L. Ashmead.

QUESTION. Do you recollect the battle on the morning of the 11th of September last?

ANSWER. Yes, sir.

QUESTION. What time was it that the firing commenced?

ANSWER. About sun-up.

QUESTION. Was there much firing?

ANSWER. Yes, sir.

QUESTION. Where did you see the battle from?

ANSWER. From the road above the house.

QUESTION. Whose house?

ANSWER. Above Parker's house.

QUESTION. How far off were you?

ANSWER. About sixty or seventy yards.

QUESTION. About how many colored persons in number did you see there upon that occasion?

ANSWER. About a hundred.

QUESTION. Did you see a young man who was wounded, there?

ANSWER. Yes, sir.

QUESTION. Where was that young man when you first saw him?

ANSWER. Up by a big oak tree.

QUESTION. How far was that from the mouth of the short lane?

ANSWER. Between forty and fifty yards.

QUESTION. Was it on the opposite side of the long lane, from the mouth?

ANSWER. Yes, sir.

QUESTION. Who was with that young man when you saw him?

WITNESS. When he was first taken out?

MR. G. L. ASHMEAD. At the time you first saw him?

ANSWER. Kline.

QUESTION. What was Kline doing with him?

ANSWER. He brought him out and set him down.

Cross-examined by Mr. Stevens.

QUESTION. Was he not above the road that leads from Penningtonville up to the mill, in the woods when you first saw him?

ANSWER. Yes sir, on the upper side.

QUESTION. The upper side of that road?

ANSWER. Yes, sir.

QUESTION. Opposite the mouth of the long lane?

ANSWER. Yes, sir.

QUESTION. There was where you first saw him?

ANSWER. Yes, sir.

Re-examined by Mr. Brent.

QUESTION. How far was that from the mouth of the small lane?

ANSWER. About forty or fifty yards.

QUESTION. You were standing there when you saw the wounded man come up?

ANSWER. No, sir; I was standing right above the house

QUESTION. Did you see him as he came out of the short lane?

ANSWER. No, out of the long lane.

QUESTION. Not out of the short lane?

ANSWER. No, sir.

QUESTION. Could you command a full view of the long lane where you stood?

ANSWER. No, sir.

MR. STEVENS. It is proper to say that the actual distance from the mouth of the small lane to the end of the long lane is seventy-one yards.

MR. G. L. ASHMEAD. There are a number of of witnesses to be examined who are not here; and as it is near the hour of adjournment, I would suggest to the Court whether we had not better stop at this point. I didn't send for them from the Debtors Apartment, supposing the witnesses we had would take all the time; but we have gone through the examination very fast this morning.

Court adjourned until Monday, at 10 o'clock, A. M.

Philadelphia, Monday, December 1st, 1851

COURT WAS OPENED AT 10 O'CLOCK.

PRESENT, JUDGES GRIER AND KANE.

Gecrge G. Leiper and Franklin Vanzant, jurors, who had been excused until this morning, were called and answered, and were further excused until Monday, December 8th.

Samuel Bell, Simon Cameron and Samuel E. Stokes, were also called, and did not answer, they were also further excused until Monday next.

The Clerk announced that the following bills of indictment had been remitted from the District Court.

No. 1, against Castner Hanway, Elijah Lewis, and Joseph Scarlet. Traason.

No. 2, against Jacob Townsend. Treason.

No. 3, against George Williams, Jacob Moore, George Reed, Benjamin Johnson, Daniel Caulsberry, Alsen Pernsley, William Brown, second, Castner Hanway, Henry Green, Elijah Clark, John Holliday, Willian Williams, Benjamin Pendergrast, John Morgan, Ezekiel Thompson, Thomas Butler, Collister Wilson, John Jackson, Elijah Lewis, Joseph Scarlet, William Brown, Isaiah Clarkson, Henry Sims, Charles Hunter, Lewis Gales, Peter Woods, Lewis Clarkson, Nelson Carter, William Parker, James Jackson, John Berry, William Berry, Samuel Williams, Joshua Hammond, Henry Curtis, Washington Williams, William Thomas, Nelson Ford, Noah Buley, Geo. Hammond, and Jacob Townsend. Treason.

These bills are to the next term, and will come on for trial at the April Sessions, 1852.

MR. LEWIS. Mr. Abraham R. McIlvaine is among the list of jurors that are returned for the present term, he says he never had any notice of it. He is not disposed to shrink from the performance of any public duty. He is now confined to the house by a severe cold, and says he will be in attendance as soon as he recovers.

JUDGE GRIER. Under such circumstances the fine will be remitted, and we shall be glad to see him when he gets better.

MR. D. P. BROWN. I have a suggestion to make to the Court, though it is not immediately connected with the issue now on trial, but still connected with one of the parties charged. There is a prisoner, (a very humble man to be sure,) but with the same rights as any other man, as your honor says, who is in confinement. He is now in a very perilous condition, and is circumscribed as regards every matter that is concerned as far as aid and comfort. I ask, may it please the Court, that you will give the Marshal such instructions as will have a tendency to alleviate his condition. It is not very certain he will last over his trial here, he will appear before another Judge, and I hope the Court will give the Marshal such instructions as will comport with the cause of humanity in this instance.

JUDGE GRIER. We will do anything in our power to alleviate his suffering.

JUDGE KANE. What is the name of the person?

MR. D. P. BROWN. Collister Wilson.

JUDGE KANE. It was said on Saturday, when the prisoners were in attendance under a writ of Habeas Corpus (ad testificandum,) there were two who were sick, are you aware of there being more than one?

MR. D. P. BROWN. I am not aware of there being more than one—but, I have no doubt there are others so situated, I will ask your Honors that the order shall be extended to all. Jacob Moore is also I understand one.

JUDGE KANE. Mr. Brown, would not the better plan be to have the persons placed in the hospital who are in such a condition.

MR. D. P. BROWN. A great deal better; there is no danger in the world about that. I have full dependence in all the officers. It was only to bring it before the notice of the Court I mentioned it.

Miller Nott, is recalled.

MR. BRENT. State what induced you to go to Parker's.

ANSWER. I was aroused by some sharp hallooing.

QUESTION. What else?

ANSWER. I started for a moment. My little boy started and ran in that direction so far that I could not call him back. That is what took me there.

QUESTION. How far did you live from there?

ANSWER. I suppose six or eight hundred steps or yards.

QUESTION. What time of day was it?

ANSWER. It was a little after sun-up. I did not look at the clock. I was reading the news at the time.

QUESTION. Did you see a man on horseback whose back was turned towards you when you first arrived?

ANSWER. I saw a man riding away.

QUESTION. His back was turned.

ANSWER. Yes, sir.

QUESTION. Could you identify who it was?

ANSWER. It was a man who had no coat on, or if he had it was a light colored coat.

QUESTION. In what direction was he riding?

ANSWER. Towards the North.

QUESTION. Did you see any negroes in that direction?

ANSWER. Yes, sir.

QUESTION. Were they in front or behind this man?

ANSWER. Behind him.

QUESTION. He was in advance.

ANSWER. Yes, sir.

QUESTION. Did you see any white men in that lane on foot?

ANSWER. No, sir, I did not see any white men at that time.

QUESTION. Were you so situated and paid such attention to it, that you could undertake to say there were not white men in the lane at that time?

ANSWER. No, sir, I was a great distance off from them so that I could not say particularly.

QUESTION. How many negroes were in the long lane behind the man on horseback?

ANSWER. They come rather scattered along the long lane.

QUESTION. How many were between you and the man on horseback?

ANSWER. I suppose there was 50. That is my opinion.

QUESTION. Did any of them return towards you?

ANSWER. Yes, there was a good quantity of them came back and about 10 or 15 advanced towards Dickerson Gorsuch.

QUESTION. State what happened with regard to Dickerson, all in your own way. State the whole thing.

ANSWER. There was an old colored man came along the road where I was standing. He was the first man I spoke to after I got there. His name was Isaiah Clarkson. I said to him, what have you been doing this morning? He said he had not been doing any thing. He said he hadn't heard the horns blow.

I told him I did not hear any horns. He then was passing towards his own house. He lived close by there. I told him stop till we see a little further about this. He turned and went back with me pretty close to Dickerson Gorsuch, within a few yards of him. About that time these twelve or fifteen men were coming up the lane. They were coming on him in a rage like manner. I told the old black man, "they will kill him, save him, save him." He did not pay attention to that, and I instantly told him to save him. Says I, "save him or mind what is before you." Then he went and throwed up his arms, and they went into the corn-field, across the fence. They said they would search the corn-field and went over.

QUESTION. Do you know what they were searching for?

ANSWER. They did not say what, I don't know what it was. Some one said they would as soon die then as live. I don't know who it was.

QUESTION. Where did they go then?

ANSWER. They went through the corn-field, and then to the house.

QUESTION. Parker's house?

ANSWER. Yes, sir.

QUESTION. What was done then?

ANSWER. They were called to order.

QUESTION. By whom?

ANSWER. Called to order by Isaiah Clarkson.

QUESTION. What then?

ANSWER. They became very quiet, you would not have known there was anybody there.

QUESTION. You speak of the twelve or fifteen?

ANSWER. Yes, sir. The principal part of them. There might have been some outside.

JUDGE KANE. You said he called them to order?

ANSWER. Yes, sir.

JUDGE KANE. What did he call out. What did he do?

ANSWER. He got up on something a little higher than they were. He took his hat in his hand and waved it round and called "Order, men." They were still making a noise, and when he had come down to the third order, they were entirely quiet.

MR. BRENT. When you first saw old Mr. Gorsuch, describe to the jury where he was lying. The manner as near as you can, and whether there was any body with him, at that time?

ANSWER. At the time I saw him, it was at the time they were passing over the corn-field. There was not any body with him.

QUESTION. In what position was he lying with reference to the bars and the house?

ANSWER. He was lying about forty-nine steps from the house.

QUESTION. How far from the bars?

ANSWER. It was not far. It was nearer the bars than the house. He was not quite dead then when I went up to him, and they did not offer to move him.

QUESTION. State when you saw Mr. Scarlet first on that morning, and what he was doing when you first saw him?

ANSWER. I saw Mr. Scarlet riding in the lane, but I am not able to say. It was about the mouth of the long lane.

QUESTION. What was the condition of his horse?

ANSWER. His horse, it was a little sweaty. It might be after the black men came up, or after the return to the house that he rode in there.

QUESTION. Which way did he go?

ANSWER. He rode down the lane to Parker's house; he rode out after awhile.

QUESTION. What distance do you suppose, by the road, a man would have to go from Hanway's mill to Parker's house by the road?

ANSWER. I dont think it would be quite two miles.

QUESTION. By the road from Hanway's I mean.

ANSWER. I was thinking about Mr. Scarlett. It would not be quite a mile.

QUESTION. The way you would have to come on horseback, it was about that distance?

ANSWER. Yes, sir.

QUESTION. How would it be across the field, nearer?

ANSWER. Some little nearer, not a great deal.

QUESTION. It would not be quite a mile by the road?

ANSWER. Not quite.

QUESTION. You heard no horns blow, I think you say, if I understand you?

ANSWER. I did not.

QUESTION. You heard a shout, which induced you and your son to go, and when you got there the firing was over?

ANSWER. Yes, sir.

QUESTION. What distance did Elijah Lewis live from there?

ANSWER. It would not be quite two miles; one mile and a half, or a little further.

QUESTION. It is further than Hanway's?

ANSWER. Yes, sir.

QUESTION. And Scarlett, how far?

ANSWER. He lives the same place that Mr. Lewis does.

MR. ASHMEAD. You spoke of a man on horseback, did you recognize what color the horse was?

ANSWER. I could not identify it.

MR. READ. Where were you stationed?

ANSWER. Not quite opposite the house; between the houses where Dickinson Gorsuch laid and the road above.

QUESTION. Not on the long lane?

ANSWER. Near an apple tree within a piece of the long lane.

QUESTION. You were on the road parallel to the Valley road, and that runs round by your house?

ANSWER. Yes, sir. (Looking on the map.) Here is where I stood, opposite to Parker's house, then I walked nearer the end of the lane.

John Nott is recalled.

MR. BRENT. How much did you get to this house before your father?

ANSWER. About ten minutes.

QUESTION. Where did you take your position when you got there?

ANSWER. Up aside the road, along the fence.

QUESTION. How far from the small lane?

ANSWER. About thirty yards.

QUESTION. Could you see Parker's house?

ANSWER. Yes, sir.

QUESTION. State what they were doing when you first arrived?

ANSWER. They broke out of the house and came up a little further. They came out and commenced a terrible shouting and battering with clubs, and then they dispersed up the little lane, and run up towards the creek, and shot at one time there, at a tremendous rate.

QUESTION. Did you see how many were outside the house, before they broke out?

ANSWER. Yes, sir.

QUESTION. How many do you suppose?

ANSWER. I suppose about sixty or seventy.

QUESTION. Where were they stationed?

ANSWER. Some in the mouth of the little lane, and some a little further up, and some in by the bars, they were put altogether.

QUESTION. Did you see any of the white gentlemen running?

ANSWER. No, sir. I did not see none but Kline and Dickerson. They are the only two I saw running.

QUESTION. You saw the negroes running up the long lane, at a terrible rate.

ANSWER. Yes, sir.

QUESTION. You did not see any of the white men they were shooting at?

ANSWER. No, sir.

QUESTION. State whether you saw any negroes come to the ground on horseback or mounted on horses?

ANSWER. No, sir.

QUESTION. Did you see any horses there?

ANSWER. I saw three or four as I looked down the lane.

QUESTION. Where were they?

ANSWER. Hitched along the fence.

QUESTION. You did not see them when they came; they were just hitched there?

ANSWER. No, sir.

QUESTION. Did you know any of the horses hitched there?

ANSWER. No, sir. I did'nt take notice.

QUESTION. Did you know any of the negroes of Mr. Gorsuch, (or said to be.) Did you know them by name?

ANSWER. Yes, sir. I saw one I knew, his name was John Beer.

QUESTION. Did you know what his true name was?

ANSWER. No, sir

QUESTION. When did you see him last?

ANSWER. I hadn't seen him a good while before.

QUESTION. Did you see him there that day?

ANSWER. No, sir.

QUESTION. Where did you see him?

ANSWER. At the brick mills, some time before.

QUESTION. Whose mill is that?

ANSWER. Castner Hanway's mill.

QUESTION. How long was that before?

ANSWER. About two months before.

QUESTION. Was he working there?

ANSWER. No, sir, he was passing by.

QUESTION. Did he stop there?

ANSWER. No, sir, I was going up and he was coming down.

QUESTION. He just walked on?

ANSWER. Yes, sir.

QUESTION. Do you know of any negroes who were in that fight, being seen about that neighborhood the next day?

ANSWER. I didn't see, I heard of some.

QUESTION. You didn't see any yourself, then?

ANSWER. No, sir.

QUESTION. Did you notice the condition of Dickinson Gorsuch? And if so, state what took place with regard to him, when you first saw him?

ANSWER. He was bleeding very much when I first saw him, and he was moved about five feet from the place where he was first set down.

QUESTION. How did he get there?

ANSWER. He rolled there; after I went out I took him water, and when I came back he was moved.

QUESTION. What took place before you went to get the umbrella and water, did you see any negroes come up?

ANSWER. Yes, sir.

QUESTION. What did they do?

ANSWER. I saw them coming up with corn-cutters, guns and scythes; they were talking at a tremendous rate; my father and an old colored man was standing by, he says to the old colored man, "they will kill that man:" he didn't say a word. He says again, "they will kill that man," and he didn't say anything that time.

MR. BRENT. What *he* did he mean?

JUDGE GRIER. Perhaps he used the word *he* for *they*.

MR. BRENT. I want to know what *he*, he meant. Who said stop him?

WITNESS. My father told old Isaac Clarkson to stop them, he held his arms up and then they went off. Then they got over in the corn-field and one says, "Come on," I would as soon die now as live. I think it was George Thompson. He went round down by the house, and Isaac Clarkson went down to the house, and called the men to order, I didn't see them going away, I didn't take notice.

MR. BRENT. You say your father said to Isaac Clarkson that he would kill him. I want to know who he meant would kill him?

ANSWER. These black men.

MR. READ. I object to that.

MR. BRENT. I insist upon my right to ask him this.

MR. READ. This witness and Miller Nott have been brought up twice by the United States, and now John is asked a series of questions which are not only an examination-in-chief, but a cross-examination; and I think this exceedingly irregular in a criminal case involving the life of the prisoner.

MR. BRENT. I can only say in regard to these facts that I was not aware what the witnesses could prove yesterday. We determined on consultation to re-examine both of these witnesses. There is no irregularity in re-examining a witness in chief, it is every day's practice in our Courts. This has not assumed the form of cross-

examination, not a leading question has been asked; if there has, it was the duty of the other side to have stopped it. This witness said that his father had said to Isaac Clarkson as these negroes advanced, "he would kill him." I desire the witness to explain who his father meant, if he knows. The witness has in fact given the answer.

JUDGE GRIER. Of course, the witness could generally only state what was said and what done. A person in using a phrase that would be vague may make it particular by a gesture, and the witness might tell who he addressed when he used the word "he," but he cannot tell what he meant, if he has told all he said and did.

MR. READ. That is my real objection; he cannot tell what his father meant. but what he did and said.

JUDGE GRIER. I suppose the boy made a mistake, and used *he* for *they*

MR. BRENT. That was what he said in his answer.

MR. READ. A great many persons talk without regard to the singular or plural; we want exactly what they said.

JUDGE GRIER. The difficulty comes from many witnesses stating a thing historically and not dramatically. Which were the words used by your father, *he* would, *you* would, or *they* would?

ANSWER. *They* will kill him.

JUDGE GRIER. There is often a confusion of persons arises in a much older witness than this, in narrating facts; and generally a boy of his age will give better testimony than a grown man.

MR. BRENT. Did you see any one on horseback riding up the lane?

ANSWER. Yes, Castner Hanway.

QUESTION. Which direction was he riding?

ANSWER. That direction. (Pointing.)

MR. READ. I think this is what he was examined on before.

JUDGE GRIER. It is no use in examining him as to what he was examined on before. If he said this before, the counsel could not intend to re-examine him upon the same thing. If he is going on to repeat the same thing, it must be a mistake of counsel.

MR. BRENT. I dont see in the examination that any such question was asked the witness on Saturday.

JUDGE GRIER. You have a right to bring any matters to the notice of the witness that were omitted before.

MR. BRENT. Did you see any negroes?

ANSWER. Yes; I saw some behind him a piece, shooting; I dont know who they were shooting at. There was nobody going to the lane but Castner Hanway and a white man; I could not see anybody else; I dont know who they were shooting at.

QUESTION. What was the distance between his horse and the negroes?

ANSWER. About twenty yards.

Cross-examiued.

MR. REED. We will fix this boy's position in the lane.

The plan is laid before him, and he points it out.

MR. LEWIS. The position described by the witness is; first on the road running south of Parker's house, along the woods opposite to a point, about half way between the house and the barn. The second position is very nearly opposite the end of the long lane upon the same road, but a little to the east towards Parker's house. (To the witness.) How long did you stand in the first position, before you moved to the second?

ANSWER. About a quarter of an hour.

J. Franklin Reigart called and affirmed.

Examined by Mr. G. L. Ashmead.

QUESTION. Are you an alderman of the City of Lancaster?

ANSWER. I am, sir.

QUESTION. Did you issue warrants for the arrest of Castner Hanway and Elijah Lewis?

MR. REED. We must ask the object of this evidence.

MR. G. L. ASHMEAD. We propose to prove that he was the alderman who issued the warrants in these cases. That after the warrants of arrest had been issued, he was present at, or about the time the arrest of Castner Hanway was made; that at that time he heard a conversation between Mr. Hanway and Mr. Kline, which conversation, I wish him to detail to the Court and jury.

JUDGE GRIER. If it amounted to confessions he should state before hand whether any threats or promises were made.

MR. G. L. ASHMEAD. Questions of that kind will not arise. You have said you issued——

WITNESS. That warrant was in reality issued by Mr. Pownell, he signed it. The affidavit was signed by him, he swore the witness at Christiana. He assisted in making the arrests, with the constable and some of his posse, and we got some hundred or hundred and fifty men from the railroad, and Hanway and Lewis were first arrested and brought to the hotel of Mr. Zercher, and when Hanway and Lewis were placed upon the porch, Mr. Kline came up to them and said, "You white-livered scoundrels, you yesterday; when I plead for my life like a dog and begged you not to let the blacks fire upon us, you turned round and told them to do so." Mr. Lewis instantly replied, "No, I didn't." Mr. Hanway said nothing, he didn't deny it, I didn't hear him make any reply. I then took Kline by the shoulder, and said, "I hope you will say nothing to produce a disturbance; we wish to do our business legally and in order." He replied that he would obey me, but could not suppress his feelings; he had had his men shot down the day before like dogs, and it was impossible for him to restrain his feelings. I insisted upon it and he remained quiet; and I didn't hear him say anything more to them. Several others then spoke up, and I was fearful of an excitement, and I had to exert myself to prevent it; and I told the constable to take them out of the view of the people, and he took them up stairs and put a guard upon them. Against the black persons nothing was said; they seemed much enraged against Hanway and Lewis.

Cross-examined by Mr. Read.

QUESTION. Was Kline's conduct very violent?

ANSWER. He made no threats—there was no violence as to taking hold of them—his feelings appeared much warmed at the time.

QUESTION. Hadn't he a formidable pair of whiskers and a moustache on?

ANSWER. Yes, sir.

QUESTION. He appeared very formidable?

ANSWER. I thought at the time he was a very singular looking man—though he seemed to do his duty as an officer. He assisted the constable in making the arrests.

QUESTION. Have you seen him since?

ANSWER. I have.

QUESTION. He is very much changed in his appearance about the face?

ANSWER. Nothing more than his moustache is off.

QUESTION. Don't he look more civilized?

ANSWER. I don't know—he didn't look uncivilized.

JUDGE GRIER. Whether moustaches are a mark of civilization or uncivilization, I don't think very important.

MR. READ. Was not his manner violent towards the prisoners as they were brought up?

ANSWER. From that expression I thought it was. His manner and feelings seemed much excited. There was no violence attempted by him, to touch them. His expression seemed severe and sharp. It was in a loud tone of voice. He was right in front of them, not more than three or four feet off.

QUESTION. Did he shake his fist in their faces?

ANSWER. No, sir.

QUESTION. Did you see whether he did or not?

ANSWER. He stood in this manner, (shows) as if speaking to them sharply.

QUESTION. With his fists clenched?

ANSWER. From his manner of speaking and his position, it seems to me as if they were so. His nerves braced, but not in an attitude of assault. I caught him by the shoulder and told him not to say anything to produce a disturbance.

Mr. READ. Repeat the language again.

WITNESS. His language to the best of my recollection—for I took notice of it and jumped towards him and caught him by the shoulder—was to this effect: "You white livered scoundrels you! Yesterday when I plead with you like a dog for my life and begged you to prevent the blacks from firing upon us, you turned round and told them to do so." I caught hold of him and told him not to say anything to produce an excitement, that I wished to do my business legally.

QUESTION. Kline was examined before you afterwards?

ANSWER. Yes.

QUESTION. Did he testify to the fact that Hanway had directed the blacks to fire on that occasion?

ANSWER. His testimony is in my pocket; I can refer to it; (refers to it.) In his affidavit he stated, I then saw another gang of negroes come with guns and clubs.

MR. READ. I want to know whether in his examination before you he testified to the fact that Mr. Hanway or Mr. Lewis, either one or the other had directed the blacks to fire.

MR. BRENT. Is it not due to the witness, to ask him first. I dont think this is competent, unless they ask the preliminary question of Kline. The rule is, before you proceed to impeach a witness, that you shall first interrogate him as to the fact, whether he did so swear; because he may admit it, or explain it.

JUDGE GRIER. I think he was examined here before, as to what he had sworn; was he or was he not?

MR. READ. He was examined before Alderman Reigart.

JUDGE GRIER. Was he examined on that point in this Court?

MR. READ. He swore positively in this very case, that he didn't hear Hanway give any order to fire; he saw him lean over and say something, what it was he could not hear. I wish to show that although this was said before Alderman Reigart in this way: that when he came to testify before him, he didn't swear to any such thing.

JUDGE GRIER. Was he asked to say whether he had not made a different statement on his oath before the alderman, and to explain it?

MR. READ. No, sir. His statement before the alderman is like the statement before the Court. He has never testified either before Alderman Reigart or this Court, to what he said to these individuals, when he threatened them as white livered scroundrels, and treated them in that way; men then in custody. A sort of conduct which, in an officer calling himself a marshal, is not very proper.

MR. J. W. ASHMEAD. That may be; that is for the jury. He thought that was as proper, I suppose, as that these people before, should refuse to save his life.

JUDGE GRIER. If it is only to prove that he said the same thing before as he said here; I dont see what object you have in it.

JUDGE KANE. It is not in the defence to support the witness of the prosecution.

MR. READ. The state of the case is this: the witness has been examined and has testified to what is entirely in contradiction to what he said at that time. It is attempted to show that by a false statement made by him to them, they confessed this fact, and I propose to show that before the same Alderman in whose presence he had made the statement, he did not repeat it on examination. That takes away any character of confession from the defendant. It is merely an assertion on the part of Kline, which he knew to be false; that it was an assertion of passion, which he has never under oath dared to make. One says no to it, and the other does not say anything; he was a very quiet, peaceable man, as we shall hereafter prove.

MR. BRENT. The simple proposition before the Court is, whether they can offer the affidavit of Mr. Kline before Alderman Reigart before they have examined Mr. Kline as to whether he gave that evidence. Every principle of justice requires that the witness should first be interrogated on that point.

JUDGE GRIER. This evidence is entirely irrel-

evant to the purpose for which it is offered, because you can draw the same argument from his swearing it here, as if he had sworn it a hundred times. The only objection I can see, would be its irrelevancy.

JUDGE KANE. So far as it might in argument be used against the witness, he is entitled to distinct notice upon his examination in chief.

JUDGE GRIER. That is if he had testified differently—but that is not the case.

MR. READ. The United States in the examination of some particular witnesses, have shaped their course in such a way as to make us ask what might properly have come out in the examinations in chief. We did not put such a question as this, in the first place, because we did not know of it. We knew of other matters, but we were afraid, under the decision of your honors, that we might be concluded by the answer, if we questioned the witness upon them.

MR. READ, (to the witness.) Did you see Mr. Hanway and Mr. Lewis come up to Christiana?

ANSWER. I saw them there; I didn't see them when they came to the house; I saw one of them at the time they came to the house; I don't recollect seeing Hanway; I saw Lewis at the time I was taking Marshal Kline's affidavit at the place.

QUESTION. At the time you were taking the affidavit you saw Mr. Lewis?

ANSWER. I thought it was him.

QUESTION. That was before the warrant was issued?

ANSWER. Yes. Lewis I think was there when I was writing out the affidavit, the warrant was issued afterwards.

QUESTION. When did you see Mr. Hanway?

ANSWER. When I saw him, was when the constable brought him and Lewis on the porch. I think I seen him go to these two men on another side of the house and arrest them—whether they were willing or not I don't know.

QUESTION. At the time of your taking the deposition and issuing of the warrants, these individuals were in reality present at Christiana?

ANSWER. I dont recollect seeing Mr. Hanway.

QUESTION. You saw them there when the constable went to arrest him?

ANSWER. Yes.

QUESTION. Didn't you understand that they came there to resist any charge?

MR. BRENT. I object to that.

WITNESS. They seemed both anxious to get off. Mr. Lewis asked me myself whether it would not do to go up to-morrow, he didn't see the necessity of going up then.

QUESTION. He was willing to go to Lancaster?

ANSWER. No, he wanted to know if it would not do to-morrow. The constable said he could not let them, and then I think one of them spoke to Thompson, and asked whether they might not remain there till next day, and send Judge Lewis down to take bail.

QUESTION. They were both on the spot at the time the warrants were issued, Mr. Lewis you saw before, and Mr. Hanway at the time the warrant was issued?

ANSWER. Not at the time the warrant was issued. I saw them serve the warrant when he was near the house.

QUESTION. Mr. Hanway didn't go down to his mill?

ANSWER. Not that I know of, when I first saw them together the constable had them, perhaps not more than ten yards from the house.

Re-examined by Mr. Brent.

QUESTION. The warrants were issued before you saw the constable have them?

ANSWER. Of course.

QUESTION. Were they there when the warrants were issued?

ANSWER. I don't recollect seeing Hanway—I think Lewis came into the room, I didn't know till after he was arrested that he was the person, but I think I saw him in the room at the time I was taking the affidavit.

QUESTION. It was taken before Pownell?

ANSWER. Yes, he as the magistrate had to swear him—he said he could not write fast enough, and I wrote the affidavit and he signed it.

QUESTION. How long after that did you see the officer serve the warrant?

ANSWER. I think not over fifteen minutes, to the best of my recollection.

William Proudfoot sworn.

Examined by Mr. G. L. Ashmead.

QUESTION. Where do you reside?

ANSWER. In Sadsbury Township, Lancaster county.

QUESTION. Are you a constable there?

ANSWER. Yes, sir.

QUESTION. Were the warrants for the arrest of Castner Hanway and Elijah Lewis, and others, placed in your hands?

ANSWER. Yes, sir.

QUESTION. Did you arrest Castner Hanway and Elijah Lewis?

ANSWER. Yes, sir.

QUESTION. Where?

ANSWER. At Christiana.

QUESTION. At whose house?

ANSWER. Frederick Zerker's.

QUESTION. Was Alderman Reigart present on that occasion?

ANSWER. Yes, sir.

QUESTION. Did you make the arrest yourself?

ANSWER. Yes sir.

QUESTION. State to the Court and Jury how you made the arrest?

ANSWER. Hanway and Lewis came to Christiana. I had been there some few minutes before they came, and I had seen them, and went out and executed the warrant on them and took them into my custody at Christiana.

QUESTION. When you took them into custody what did they say?

ANSWER. They asked me whether they could not get off till the next morning. I told them it was out of my power to let them off; I hadn't any authority to let them off. At the time I arrested them, Kline, the deputy marshal, came up, and he says to Castner Hanway and to Elijah Lewis, You white-livered scoundrels! if you had said one word yesterday, our men would not have been killed. Mr. Hanway made no reply; though before that, Kline says, but

rather than saying that, you told them to shoot. Mr. Hanway made no reply; Kline said, you told them to shoot; if you said a word in our behalf, it would have saved our men. Mr. Hanway made no reply, and Elijah Lewis said, I didn't.

QUESTION. Have you given, as near as you recollect, the language used by both Kline and Hanway, on that occasion.

ANSWER. To the best of my knowledge and belief, I have.

QUESTION. Was any thing said upon either side as to begging for lives?

ANSWER. Not that I heard.

Cross-examined by Mr. Reed.

QUESTION. Before the affidavit was made before Mr. Pownell, did you see Mr. Lewis and Mr. Hanway, at Zerker's tavern?

ANSWER. I did not.

QUESTION. When did you first see them?

ANSWER. I seen them after the warrant was handed over to me?

QUESTION. Where about did you see them?

ANSWER. Just off the porch at the sign-post.

QUESTION. How long did it take to write that deposition of Kline, and issue the warrants?

ANSWER. I cannot tell.

QUESTION. Did it take half an hour?

ANSWER. I don't know. They came and fetched me down, and they were there before I came.

QUESTION. It was quite a long deposition, was it not?

ANSWER. Yes, sir.

QUESTION. It took time enough to write a long deposition.

ANSWER. Yes.

QUESTION. You and they knew what the object of that was, to arrest certain persons?

ANSWER. Of course.

QUESTION. And if Mr. Lewis and Mr. Hanway were there, they knew that somebody was to be arrested?

ANSWER. That I cannot tell you.

QUESTION. You mentioned that they wanted to go home, and go up the next day; I suppose, I course, to make their family arrangements.

ANSWER. Yes, sir.

QUESTION. Personally you were willing that they should go.

MR. BRENT. I should like him to say, whether they said it was to make their family arrangements; I object to any inferences; state what was said.

JUDGE GRIER. What was the question, and what was the difficulty?

MR. READ. The witness stated that they requested him to let them go till morning; I want to know whether personally he was willing that they should go?

MR. BRENT. I do not object to that question.

ANSWER. I was not willing for them to go.

MR. LEWIS. Didn't you state to them immediately after their arrest, that you had not any objections to their going, until you ascertained, as you thought, that there was some considerable excitement upon this subject?

ANSWER. They told me they had been to the District Attorney of Lancaster, and asked him, and I asked them what he said, and they could not give me a correct account of it, and I could not, for my part, let them go. Mr. Lewis said the District Attorney said he hadn't anything to do with it, and it was all upon me, and I told them

MR. READ. You didn't like to take the responsibility, I suppose?

ANSWER. Yes, sir.

Charles Smith affirmed.

Examined by Mr. Ashmead.

QUESTION. Where do you reside?

ANSWER. In Chester County.

QUESTION. How far from Christiana?

ANSWER. About two miles.

QUESTION. Do you recollect the morning that Kline and his party came up to Christiana?

ANSWER. Yes, sir.

QUESTION. State to the court and jury what took place upon that morning with regard to that transaction.

ANSWER. The morning that they came up, there was a colored man —

MR. LEWIS. I suppose the object now is, to get the same testimony from this witness that was given on the hearing before Alderman Reigart. I have a copy of the testimony, and I will show to the court, by marking it along the side, what the testimony is, so as to show to what I object. (Does so, and hands it to the court.) Now, if the court please, I apprehend that this stands precisely upon the same basis as any other conversation between third persons, and for that reason is entirely inadmissible.

JUDGE GRIER. Would the fact be relevant, speaking of it not as an admission, but as a fact, would it be relevant to this case, to prove that some persons went from here to give notice in the neighborhood, though not brought home to the prisoner.

MR. LEWIS. It might be relevant if it were shown that notice was given to any person participating in this transaction; but that notice was given to a man who had nothing to do with it, to a stranger to the transaction, dont appear relevant. It must be shown to have become a part of the *res gestæ*. What is wanted here, is the connecting link, and that the testimony does not supply—the connecting link between the actors in this conversation and the actors upon the ground afterwards.

A conversation between two persons at Christiana, passengers upon the railroad cars, in relation to there being kidnappers abroad, or of persons coming into a neighborhood for the purpose of reclaiming fugitive slaves, and departing before the outbreak occurs, in the next trains of cars would not be evidence here, because not in any way connected with the transaction. This stands precisely upon the same ground; because, inasmuch as there is no evidence here, nor offer to produce evidence going to connect these individuals with the transaction; they are strangers to the whole transaction, and I submit it is not evidence.

MR. G. L. ASHMEAD Your Honors will recollect, that Mr. Kline in his examination stated,

that on the way up to Christiana, and when not far from there, there was a colored man from this city named Samuel Williams, met him, and stated to him, that the men he was searching for, had been there, but that they were too late. He stated also, that this same colored person, after their party had got into a wagon, followed them a mile or so along the road, and he knew it was the same man, because he described his dress, &c. I wish to show that this same colored man, Samuel Williams, on the morning on which Kline first went up to Christiana, on the 10th of September last, was at Christiana; that he stated he had been there, for the purpose of giving information to the slaves of their intended arrest, by a party from this city, and that he had left at Christiana, a paper giving that information. I intend to go further, because all testimony must have a commencement, as well as an ending; and this is the commencement.

I intend to show that Samuel Williams informed Mr. Smith, the witness, that he had left a paper at Christiana giving this information, and to follow it up by showing the existence of that paper containing the information, which Williams said he had taken into that neighborhood, and cautioning the people there as to the arrest, and giving information. We offer it to show preconcert and combination among the parties in that neighborhood, and especially among the parties assembling at the house of Parker at the time Edward Gorsuch was murdered, and we offer it upon the same grounds that we offered to show the blowing of the horns—both of them being means of collecting the people together. Upon every principle of law and reason, I think we have a right to show this, as a fact in the case, merely tending to show preconcert and combination among the parties assembled at Parker's.

Mr. John W. Ashmead. This testimony is exceedingly important it seems to me, in presenting the case of the United States. The charge is treason, which is analogous to conspiracy, and the rules of evidence applying to conspiracy apply very much the same to treason. The allegation is, that these people were assembled at a certain house, on a certain occasion, to resist an officer, and to render nugatory and void the law he went to execute. And we have shown the acts of many of the parties on the ground, and we have shown the occurrences of the morning of the 11th September, 1851. We now propose to begin at the beginning of this transaction and go through with it, that the Court and jury may comprehend it—and we begin by showing that the knowledge of this fact was known to Williams, one of those indicted with the defendants, that he preceded the officer making the arrest, first to Penningtonville, that he, by mistake, instead of going to the house of a party for whom he sought, went to the house of the witness, and there he made statements in reference to these slaves—detailed the object for which he went up, asserting that he had been to Christiana, and had left there a paper, upon which the names of these slaves were written, and left it there to give information to the people that the officers were coming up to make the arrest.

This is the beginning of the transaction and was the first information which led to the assembling of the band of armed negroes and the other parties at Parker's house. If a man starts a conspiracy and goes ahead for the purpose of giving information, all that is the beginning of the transaction and part of the *res gestæ*, which we can give in evidence. And after the information taken by this man, this defendent was seen there, acting in concert with them, encouraging them, and he is responsible for all that happened from the beginning, and even if he is not connected from the beginning, notice is shown to be given, and he is found actively engaged in preventing the arrest.

Judge Grier. Is that person one of the defendants?

Mr. Ashmead. One of the defendants indicted and who will be tried. Inasmuch as Williams went up and seems to have been a sort of officer who went ahead to give the information, and under that these people were collected together, and the defendant among them; under the charge delivered to the grand jury by Judge Kane he is responsible. Suppose treason committed against the United States by violence and force to prevent the execution of a particular law, and suppose a party should be shown twenty or a hundred miles distant from the transaction to have loaded guns, or given guns to parties and sent up to warn them, though he might not have been at the scene of the transaction, he would be responsible. So here, if Williams went there in violation of the law to give information, and gave information by means of which this force was collected, and this defendant was there acting in it, and among these people, when so collected, it seems to me it is clear that he is as much responsible for that act, as if he had gone up with Williams.

Mr. Lewis. I dont see that the objection I made to the admission of this evidence is answered. If we look at the indictment we discover that this defendant is indicted for having committed the several acts therein named, in company with other persons unknown. Williams is not mentioned in the indictment. It is now proposed to show some conversations, not, as I understand even with Williams himself,—

Mr. Ashmead. Yes, it is with him.

Mr. Lewis. Well, it is proposed to show some conversation with him in relation to these persons coming for the purpose of making some arrests of slaves. Now it is to be recollected that Williams is in no way connected by any of the evidence yet given, with the defendant, nor with any of those who appeared upon the ground as far as appears, and it will be seen as we progress that that is the truth. The defendant was there by mere accident—a spectator merely without knowing anything about what was intended, or going on, and we have a right to assume in the present position of affairs, that such was the case; and what is it then under these circumstances that is attempted to be done. To show that other persons had such conversation as tends to prove that they knew there was a person in the neighborhood or about to come into the neighborhood

for the purpose of reclaiming these slaves. This does not in any way affect us, because it wants the connection which is neeessary between ourselves and this individual. Persons may converse upon this subject—persons may come into the neighborhood and give notice, yet if that conversation is not connected with us in any way, and the notice does not reach our ears and we are there merely by accident, how are we to be implicated in the consequences of the notice?

In cases of conspiracy the evidence must first be given to show that the party charged was connected with the conspiracy—after that you may show conversations among the conspirators relative to the immediate subject of the conspiracy, and you cannot prove general conversations, but nothing but that which has an immediate relation to the matter. Unless it is so, the consequence would be that any man who happens to be upon the ground as a mere spectator might be implicated by conversations that he knew nothing of, and by notice that never reached his ears.

The same evidence would have been relevant if Miller Nott had been the person charged; he was upon the ground, and was brought there only a few minutes later than Mr. Hanway, and as far as appears, came there with precisely the same object. There is nothing to connect him or Mr. Hanway with it, and I insist upon it, that there is a clear distinction between such communications as are made between persons who are involved in a conspiracy, and who have by some act and declarations of their own, been connected with it; and declarations that merely show that there were some persons that had cognizance of it; and those declarations never came to the ears of the parties.

JUDGE KANE. If this defendant was present at the time of the asserted overt act, as it is to be contended that he partook in it, and was a party to it, the question extremely material is, as to the intent of his coming there. Was it by accident, or in pursuance of preconcerted design. The purpose for which he came is part of the case for the United States, and they may prove it by showing the existence of circumstances, from which the jury may infer that the appearance of the prisoner at a particular time, at a particular place, and under certain circumstances, was in pursuance of a concerted purpose. A body of men are assembled on Braddock's field; the question is, whether assembled there for the purpose of resisting the laws of the United States, or whether there by mere accident. A proclamation stuck upon the sign-posts in the neighborhood inviting all who are determined in resisting the law, to assemble at that hour in Braddock's field, though the authorship of it be not traced to the actors, yet it is a fact from which a jury may infer the intentions of the parties who had assembled at that hour, at that place, if violence was subsequently done.

How far the evidence of the particular witnesses may be about to give, can avail to show this purpose, is a question for the jury on the argument. The simple question for the court is, whether it is not admissible as evidence, — to the history of the transaction. In that view the court is disposed to admit it.

JUDGE GRIER. We consider there is some *prima facie* evidence, which may be rebutted, that this man partook—that he was at least present at an outrage in which a hundred men were concerned. Having thus far identified him with that occurrence, the acts of all the parties concerned in it became evidence against him to show the nature of the offence. Otherwise it would be impossible to make out treason or conspiracy. If a man is found armed, or in company with one hundred other men opposing an officer, and he is charged with treason, evidence may be admitted that there were meetings held and speeches made inciting to rebellion against the laws, even if that person was not present. It becomes a part of the history—of the *res gestæ;* and we must have the whole *res gestæ* to judge of what was the intention of the parties.

MR. READ. I suppose we will be entitled to the converse of the proposition when we come to our case.

JUDGE GRIER. Of course, you can show any fact that tends to contradict this. If I were you, I would not object to the testimony.

MR. READ. I don't think we shall now, for we have what will be important for us hereafter.

Examination of the witness continued by Mr. G. L. Ashmead.

QUESTION. You have stated that on the morning Mr. Kline came up, a colored man came to your place; what time was it?

ANSWER. About daylight.

QUESTION. What was his name?

ANSWER. Samuel Williams.

QUESTION. State what took place between you and him?

ANSWER. He said he came up in the morning line, and several persons along with him, and they were on the hunt of slaves, one of them named Nelson and several others, he had left their names on a paper at Christiana. He was going to Boyd's and got to my place in mistake. He wished us to give the slaves notice.

QUESTION. Notice of what?

ANSWER. That their masters, or the men who came up in the cars were after them.

QUESTION. To whom was the notice to be given? what did he say about the notice?

ANSWER. He said he wished us to give them notice. He said nothing further.

QUESTION. Nothing as to whether he knew the men in the cars?

ANSWER. He said he knew one man named Kline, and that Kline knew him.

QUESTION. Did you understand from him what the paper contained that he left at Christiana?

ANSWER. Nothing but these names.

QUESTION. Did he state what the names were?

ANSWER. I don't recollect the names.

QUESTION. Did he say to whom he gave that paper?

ANSWER. No.

QUESTION. Did you go to the assistance of Dickinson Gorsuch the wounded man, that morning?

ANSWER. No, I didn't go to his assistance, I was asked to go, Kline asked me.

QUESTION. How far was that from the scene of action, where you were?

ANSWER. About three miles. He said he would give five dollars to any one who would go to fetch Edward Gorsuch and his son to Penningtonville; I went to the orchard. Dickinson Gorsuch lay at the time I was there at Levi Pownell's, I went for Edward Gorsuch—I got there between nine and ten o'clock in the morning, and I found him laying in the orchard.

QUESTION. What was the condition of the body when you first saw it?

ANSWER. Laying as he was dressed—just laid out on the board.

QUESTION. Blood about his person?

ANSWER. I didn't see none.

QUESTION. Did you take him to your house?

ANSWER. No.

QUESTION. Where did you take him?

ANSWER. I didn't move him at all, the inquest was not held at that time and they wished to take him to Christiana. I left before he was moved away.

QUESTION. What time was it when you left?

ANSWER. I left and got to Penningtonville about 12 o'clock; that is three miles below.

MR. BRENT. Did you notice the injuries on the body of Mr. Gorsuch?

ANSWER. No, sir. He was bleeding at the mouth. I didn't examine the bodies.

QUESTION. You say the colored man told you he had come up to give this information.

ANSWER. Yes, sir.

QUESTION. That he had been to Christiana and had left their names on a paper; you dont recollect the names?

ANSWER. Yes, sir.

QUESTION. He further said he wished you to give notice, or he wished notice to be given—which?

ANSWER. He wished notice to be given to the slaves.

QUESTION. Did he specify the slaves, or did he speak generally?

ANSWER. He just wished us to give the slaves notice.

QUESTION. Did he say the runaway slaves or the colored people?

ANSWER. Slaves, he said.

QUESTION. None of these slaves were in your immediate neighborhood so far as you knew?

ANSWER. I do not know where any of them were.

QUESTION. You didn't tell him?

ANSWER. I didn't tell him anything about it.

QUESTION. Did he tell you from whom he got this information?

ANSWER. No.

QUESTION. Or how he got it?

ANSWER. No.

QUESTION. Did you ask him the question?

ANSWER. No, I didn't ask him any questions about it.

Cross-examined by Mr. Lewis.

QUESTION. Where is Boyd's?

ANSWER. It joins my property on the East.

QUESTION. That is about three miles from Parker's?

ANSWER. Yes, as much as four miles east of Parker's.

QUESTION. Not far from Parksburg?

ANSWER. About two miles.

Dr. Augustus Cain affirmed.

Examined by Mr. G. L. Ashmead.

QUESTION. Where do you reside?

ANSWER. Near Christiana, some eight hundred or a thousand yards from there, I suppose.

QUESTION. How far from Parker's house?

ANSWER. About two miles and a half.

QUESTION. Do you recollect anything that took place on the afternoon of the 10th of September last? State what took place then?

ANSWER. Josephus Washington presented a paper for me to read on the afternoon of 10th September. It contained three names or parts of names. The first one I have forgotten—the second name was Josh, the third Ford. A dash of the pen was opposite each name, and just beneath that was Hartford Co., Maryland.

QUESTION. Was Josephus Washington a colored man?

ANSWER. Yes.

QUESTION. Was anybody with him?

ANSWER. Yes.

QUESTION. Who?

ANSWER. I was not aware of his name at the time, I have understood it was John Clark, he was a colored man also.

MR. J. W. ASHMEAD. They escaped from prison.

MR. BRENT. When did you first hear of the murder of Edward Gorsuch?

ANSWER. On the morning of the murder, about six o'clock. Not of the murder, I didn't hear, but I heard that the kidnappers had been at Parker's. That was the time I heard it first.

QUESTION. As early as six o'clock in the morning?

ANSWER. Yes. I didn't hear it at Christiana, but some short distance above my place.

JUDGE GRIER. I suppose in the language of that region, any master seeking to recover his slave, is called a kidnapper. I want to know what the witness means by it. I know it is a cant phrase with some people—to say so.

WITNESS. I give the words as they were told to me by a colored man, that there were kidnappers at Parker's.

QUESTION. Do you reside nearer to Parker's than Christiana, or in the opposite direction?

ANSWER. In the opposite direction. It was above my place, some two or three hundred yards nearer Philadelphia.

QUESTION. Who told you about it?

ANSWER. Francis Hawkins, a colored person.

QUESTION. What time did you first hear of the murder?

ANSWER. Sometime in the forenoon of that day.

QUESTION. And you heard that there had been a fight at that time?

ANSWER. I dont know as to that; I understood that some persons had been murdered.

QUESTION. Were you at any time, after you heard of this occurrence of the man's having been killed, called upon to dress any wounds of any colored persons, and who were they?

ANSWER. I was; sometime in the forenoon of the day.

QUESTION. How many?

ANSWER. Two.

QUESTION. How were they wounded?

ANSWER. One was wounded in the arm, and the other in the thigh, with balls; I extracted the balls.

QUESTION. At that time you knew a man had been killed?

ANSWER. I had heard it at Christiana before that? I dont know how long before, an hour perhaps; I dont know as to the time.

QUESTION. Did you give any information to have these men arrested?

ANSWER. I don't know that I did.

QUESTION. Can you give the names of these colored men?

ANSWER. I believe I can. One was Henry C. Hopkins, and the other was named John Long, I think.

QUESTION. Have you any knowledge of any meetings having been held in that neighborhood in regard to fugitive slaves?

ANSWER. No, sir.

QUESTION. Have you knowledge of meetings having been held in regard to the Act of Congress in regard to fugitive slaves?

ANSWER. I don't know that I have, specially.

QUESTION. Had you knowledge of any meetings in which that was considered, though called for other purposes?

ANSWER. I think it is likely I had.

QUESTION. State where the meeting was, and when?

ANSWER. I suppose I am understood properly that the fugitive law was taken into consideration.

QUESTION. You were at it?

ANSWER. Yes.

QUESTION. When was it and where?

ANSWER. It was at Westchester, at the Horticultural Hall.

QUESTION. How far is that from Christiana?

ANSWER. Thirty miles perhaps.

QUESTION. Were there speeches made at that meeting against the law?

ANSWER. There were speeches disapproving of the law, I believe.

QUESTION. Anything said about harboring the fugitive slaves?

ANSWER. I don't recollect that anything was said of that kind.

QUESTION. Look at that notice of a public meeting, and state whether you were at it? (Notice shown him.)

ANSWER. I was not at it, sir

QUESTION. You know nothing about that meeting yourself?

ANSWER. I do not, sir.

QUESTION. When was the meeting held that you attended?

ANSWER. I can't recollect the time, I can't state how long before this occurrence.

QUESTION. Was it published in the papers?

ANSWER. I think it is likely it was, I don' recollect how I received the information.

QUESTION. Was it a year before this occurrence?

ANSWER. I can't say, I don't like to speak unless I know certainly.

QUESTION. We want the best of your recollection as to the time?

ANSWER. It was within the last two years certainly—my memory don't serve me with regard to the time.

QUESTION. Did you see the resolutions published in the papers afterwards?

ANSWER. I didn't.

QUESTION. Who was Chairman of the meeting?

ANSWER. I don't recollect that.

QUESTION. Do you know whether Hanway was present?

ANSWER. I don't—I don't recollect seeing him at it.

QUESTION. Have you knowledge of other meetings in the neighborhood of Christiana or Penningtonville?

ANSWER. No, sir.

QUESTION. In what papers in Westchester are the proceedings of those meetings generally published?

ANSWER. I dont know that I saw the proceedings in any of the papers?

QUESTION. Were you an officer of that meeting?

ANSWER. No, sir.

QUESTION. Do you know an officer of that meeting?

ANSWER. I do not.

QUESTION. The Fugitive Slave Law was passed in September, 1850; the meeting was after its passage?

ANSWER. Yes.

QUESTION. What was the original purpose for which the meeting was called?

ANSWER. I cant tell that.

MR. G. L. ASHMEAD. How long after the passage of that law was it, that this meeting was held?

ANSWER. I cant tell.

QUESTION. About how long?

ANSWER. I cant say.

QUESTION. Can you say it was within three months?

ANSWER. I cant fix the time of it.

QUESTION. Was it in the winter or spring?

ANSWER. I should think it was in the spring; I am not positive of it.

QUESTION. Was it a society that met?

ANSWER. I believe it was.

QUESTION. What society was it?

ANSWER. I understood it be the Anti-Slavery Society.

JUDGE GRIER. Are you speaking of the Convention there?

ANSWER. It was the Annual Convention.

QUESTION. You cant say whether Hanway was there?

ANSWER. I dont recollect seeing him there.

QUESTION. Was that the only meeting you attended in regard to this subject?

ANSWER. The only one I recollect.

QUESTION. In what paper in Westchester are the resolutions of that society generally published?

ANSWER. I dont know if any resolutions were were adopted at that meeting.

QUESTION. Do you know in what papers in Westchester the resolutions of that society are generally published?

ANSWER. I am not aware of there having published any of the proceedings in any paper in Westchester.

MR. BRENT. How many attended in that convention from Sadsbury township?

ANSWER. I cant tell.

QUESTION. Can you give the names of some?

ANSWER. I don't know that I can; I don't recollect.

QUESTION. Was Elijah Lewis there?

ANSWER. No, sir.

QUESTION. Was Scarlett there?

ANSWER. I dont think he was.

QUESTION. Was Squire Pownell there?

ANSWER. I can't recollect.

QUESTION. You can't state who was there beside yourself?

ANSWER. I can't tell, I was there as a spectator; I didn't receive any invitation to go.

QUESTION. In whose house did you see John Long?

ANSWER. In a tenant house of mine.

QUESTION. Do you know if he had another name?

ANSWER. No, sir, I do not.

QUESTION. Do you know if he was a runaway slave?

ANSWER. I do not.

QUESTION. Will you describe his appearance?

ANSWER. I dont know that I can describe him correctly, I had only known him a short time before this occurrence. He was rather light colored; he was called a short man perhaps, and rather thin.

QUESTION. he tell you how he got hurt?

ANSWER. He did not.

QUESTION. Did you ask him?

ANSWER. I did not ask him any questions.

QUESTION. How long did he remain in your tenant house?

ANSWER. I cant tell as to that. I left after that. Henry C. Hopkins occupied my house. He was the other man wounded, a colored man.

QUESTION. Do you know when Long left that house?

ANSWER. I do not.

QUESTION. Do you know where he went to?

ANSWER. I do not.

QUESTION. One of the wounded men was your tenant and the other was there?

ANSWER. I didn't say that John Long resided there.

QUESTION. When did you see either of them last?

ANSWER. The day of the murder.

QUESTION. This was in the forenoon you dressed their wounds?

ANSWER. I didn't visit them afterwards.

QUESTION. They left that neighborhood?

ANSWER. Yes.

QUESTION. Did you go there to visit them again?

ANSWER. No, sir. They left the neighborhood immediately after. I presume so.

QUESTION. How do you know they left, unless you went to visit them?

ANSWER. There was no one in my house the afternoon of the same day; it was tenantless.

QUESTION. Where did John Long reside?

ANSWER. I cant tell, I saw him several times before, not after.

QUESTION. Did he live in that neighborhood?

ANSWER. I cant tell you where he lived.

No cross-examination.

John Roberts sworn. (colored.)

Examined by Mr. George L. Ashmead.

QUESTION. Where do you reside?

ANSWER. About a mile the other side of Christiana in Smyrna.

QUESTION. How far from Parker's house?

ANSWER. About three miles I suppose.

QUESTION. How long has it been since you have been down in the debtors' apartment in Moyamensing?

ANSWER. Seventy-two days.

QUESTION. Was there a colored man there named Josephus Washington and another named John Clark?

ANSWER. Yes.

QUESTION. How long since you saw them?

ANSWER. I dont know how long, I guess it has been three weeks though.

QUESTION. What became of them?

ANSWER. I dont know.

QUESTION. Were they in prison with you?

ANSWER. Yes, in the same place I was.

QUESTION. Did they escape from prison?

ANSWER. Yes.

QUESTION. How did they escape?

ANSWER. I dont know.

QUESTION. They didn't break any locks or any thing of that kind that you saw afterwards?

ANSWER. No, sir.

QUESTION. Do you recollect the morning of the 11th September, last?

ANSWER. Yes.

QUESTION. Did any person come to your house that morning?

ANWER. Yes, Joseph Scarlet, a white man.

QUESTION. What time did he come there?

ANSWER. Just about sun up, he was on horseback.

QUESTION. State what he said that morning, as far as you recollect it?

ANSWER. He came and asked for my father, and my mother told him he was not at home, and he asked where he was, and she told him he was at William Whitson's, and she asked what was the matter, and he said there was kidnappers at Wm. Parker's, and he told me if I knew of any colored people, I was to let them know.

QUESTION. Did you let any colored people know?

ANSWER. I went to Joseph More's, to let his man know, but there was none of them at home.

QUESTION. What did you do yourself that morning?

ANSWER. I returned home from Joseph More's, and started to go down to Parker's myself. I borrowed a gun from Jacob Townsend, a white man.

QUESTION. Who loaded the gun?

ANSWER. Jacob Townsend.

QUESTION. Did you tell him what you wanted the gun for?

ANSWER. I told him there was kidnappers at Wm. Parker's. I didn't tell him more than that.

QUESTION. After you got it, what did you do?

ANSWER. I started to go to Wm. Parker's and got as far as George Irvins I reckon it was about 8 o'clock in the morning, I don't know exactly what time it was.

MR. BRENT. What was understood when it was said kidnappers?

MR. READ. John, don't answer that.

MR. BRENT. I want to show what was meant there by that word.

JUDGE GRIER. I take it every body knows that it is a slang phrase there, for men in search of runaway negroes.

Samuel Hanson sworn, (colored.)

Examined by Mr. G. L. Ashmead.

QUESTION. Where do you reside?

ANSWER. I lived at Wm. Ray's, about a mile and a quarter from Christiana, about two miles and a half from Parker's house, as near as I can tell.

QUESTION. Were you over at Parker's, on the morning of the battle in September last?

ANSWER. Yes, I was past there. I don't know what time it was when I got there. It was a while after sun-up.

QUESTION. Did you get there after the fight was over?

ANSWER. Yes.

QUESTION. How long after?

ANSWER. I don't know.

QUESTION. Did you see a good many persons there?

ANSWER. Yes.

QUESTION. A good many colored persons?

ANSWER. Yes, I suppose about fifty.

QUESTION. Were they armed?

ANSWER. Some were.

QUESTION. What with?

ANSWER. Guns.

QUESTION. Did you hear firing as you went towards Parker's?

ANSWER. I did.

QUESTION. Much or little?

ANSWER. As I was coming down the lane, I heard a good bit.

QUESTION. Did you see Hanway there?

ANSWER. I did.

QUESTION. Where was he at the time you saw him?

ANSWER. I saw him between the little house and Parker's house.

QUESTION What house is that?

ANSWER. That little house standing on the right hand side going up towards Parker's.

QUESTION. Is it nearer Parker's house than the creek is?

ANSWER. Yes, sir. No one lives in it. Is is between Parker's and the creek.

QUESTION. Where did you see him?

ANSWER. Between that little house and Parker's.

QUESTION. That was in the long lane?

ANSWER. Yes, sir.

QUESTION. Was he on horseback or on foot?

ANSWER. On horseback.

QUESTION. Which way was he going?

ANSWER. On up the road towards Pownell's house, and towards the creek, also.

QUESTION. Is Pownell's house in the long lane?

ANSWER. Yes, sir.

QUESTION. Beyond the creek?

ANSWER. Yes, sir.

QUESTION. How far were you from him when you saw him?

ANSWER. I don't know; I can't tell how far.

QUESTION. Give us some idea of the distance.

ANSWER. I suppose I was about five or six yards from him. I was in the road coming along up towards the house.

QUESTION. Did you pass Mr. Hanway?

ANSWER. Yes, I did.

QUESTION. Did you speak to him as he passed?

ANSWER. No; I didn't.

QUESTION. Had you any arms with you?

ANSWER. No, sir, I hadn't.

QUESTION. Did you see any white men near Hanway?

ANSWER. I don't recollect whether I did or not.

QUESTION. Did you see any colored men behind Hanway in the road?

ANSWER. No. There was some standing just above him, as if they were going away, like.

QUESTION. Were there some in the lane behind him?

ANSWER. Yes, there was some behind him right up the little lane, when I saw him.

QUESTION. And some before him in the long lane?

ANSWER. No, I didn't say so.

QUESTION. What did you say?

ANSWER. I said I didn't see any colored people after him.

QUESTION. Did you go on towards Parker's house?

ANSWER. I went into the lane a little piece, and turned round and came out. I was not there long, when I started and went home.

QUESTION. Did you see the body of old Mr. Gorsuch?

ANSWER. I did.

QUESTION. How near did you go to it?

ANSWER. I suppose I was about a yard from him.

QUESTION. Was he dead or alive?

ANSWER. I dont know.

QUESTION. How did you happen to go there that morning?

ANSWER. I first in the morning before I went there, went to Christiana to get a pair of boots, at the shoemaker's, and the shoemaker was not up, and I hallooed, and he came down, and I asked him, and he said he hadn't any boots for sale, and I asked him, if they had any at the store, and he said he didn't know; and I asked

him, and he told me the store-keeper lived in the house of Mr. Pownell, and I goes to the back kitchen and knocked, and nobody answered, and I went on to the front porch, and staid there a good while, and as I was sitting there, a man came along, and said there was kidnappers at Parker's, and I sat there still, and he went on, and then he came past again, and I asked him if it was so, and he said it was, and I went on to William Rays. That was a white man, and his name was George Pownell; he was a-foot. He was going from Parker's house when I first saw him, and he came up the road past me, and told me they were there, and went on past me, and after a-bit came back, and I asked him if it was so, and he said it was; that he heard them making a great hallooing, and blowing a horn.

QUESTION. When you first saw him was he going towards or away from Parker's house?

ANSWER. He was coming to Christiana, which was going away from Parker's house; he came past me.

QUESTION. Then he was going towards Parker's house.

ANSWER. No, he was coming to Christiana when he came past me. I was setting on the store porch; it is on the out-edge of Christiana like, where I first saw him coming to Christiana, and he passed me, and he said there was kidnappers at Parker's, and I dont know what I said, and he went on towards the big house, and after a bit I saw him come past me again, and I asked him if it was so, and he said it was.

QUESTION. Which way was he going then?

ANSWER. Then he went on to the same road past this house.

QUESTION. Did he go towards Parker's when he passed you the second time?

ANSWER. He did not.

QUESTION. He went towards this big house of Pownell's?

ANSWER. No, sir.

Cross-examined.

QUESTION. Do you work for Isaac More?

ANSWER. No, sir.

QUESTION. Did you work at his threshing machine?

ANSWER. No, sir.

QUESTION. Were you there that day?

ANSWER. No, sir; no part of the day.

QUESTION. You got there after all the firing was over; there was no firing after you were there?

ANSWER. No, not while I was there.

MR. READ. Where did you see Hanway?

ANSWER. I saw him in the lane, between Parker's house and the little house.

QUESTION. Are you positive about that?

ANSWER. Yes, sir.

QUESTION. Was it towards the north or south?

ANSWER. It was above that little house. I don't know whether it was to the north or south. It was on that side of the river.

QUESTION. Near an orchard?

ANSWER. Yes, near an orchard.

QUESTION. Which way was the horse's head?

ANSWER. I don't recollect now which way the horse's head was.

QUESTION. Was he riding fast or standing still?

ANSWER. I don't recollect whether he was or not. I think he was riding, and going down by the creek.

QUESTION. That is all you saw on that occasion?

ANSWER. That is all I saw.

QUESTION. Whereabouts is Mr. Ray's?

ANSWER. About 1½ miles from Christiana.

QUESTION. Are you the son of Samuel Hanson?

ANSWER. Yes, sir.

MR. BRENT. Did I understand you to say you went to get shoes?

MR. READ. I object to a cross-examination on the part of the United States, after he is handed over to us after the examination-in-chief, unless it is something new that we have gone over. It is not fair for the prisoner, nor is it the mode of practice in any Criminal Court, whatever. The United States go through with their task, and we cross-examine. If they wish to know any thing in regard to what we have advanced in our cross-examination, that is very well; but to go over the whole ground, and repeat the same thing over again, is depriving us of cross-examination altogether

MR. BRENT. The gentleman's ideas of fairness are those which suit *himself* and his own views; and I think they are wholly unnecessary. I say, that if a cross-examination leaves a confused impression, nothing is more fair and legitimate than to examine further into the meaning of the witness. First, I wanted to understand where this transaction of George Pownell, (having passed and repassed him,) where it took place. First, he says it took place near Parker's house, and secondly, near Christiana. The cross-examination has left that confused. Then, with regard to Hanway being at the orchard. It may have been that Hanway returned, after going up the lane, he might have returned to the orchard. I say to your Honors, it may be possible. The witness says he saw Hanway between the creek and Parker's house, and that there was no firing; while there is testimony to show that there was firing as he passed up the long lane, and that there was a crowd of negroes. And unless the Court rules it out, I shall consider I have a perfect right to put the question.

MR. READ. I did not ask one word about George Pownell; we left that to the examination-in-chief. I cross-examined where Hanway was about that time, and where he could be found, for the purpose of showing that the witness had made a mistake. The object is to begin again, because the witness has contradicted himself, in order to try and make out of him a straight story. What is the benefit of a cross-examination, if we find that we are to go over the same ground again, and that the United States is to begin a second cross-examination? What is the object of a cross-examination? It is, that we may see by the mode or manner of a witness, his want of knowledge, and his ignorance of stated facts, which have been stated by other witnesses. It is not for the United States, after having ex-

amined upon all points they think proper, to go over the ground again, and build him up. No one has a right, when the edifice is reared up, to throw it down again. No man has a higher respect than I have for the Attorney General who has come here to prosecute for the United States. I say no man has a higher respect than I have. He comes here to prosecute in this case on the part of the United States. I have nothing to do with that, but I do say that the proper mode of examination is, when you have gone through with a witness, and there is nothing upon the cross-examination that varies from the original examination, you are not to go to matters that are left in the same condition as they were before. If the witness is confused, that is our benefit, evidently. It is the right of the prisoner to let the Court and jury see what he is. If he is an unintelligent man, or if he is not telling the truth, or if he is telling the facts in a confused manner, he is not to be bolstered up. We don't know the story that he tells out of Court is different from the story he tells on the witness stand. We don't know that. There is no use of a *viva voce* examination if the whole benefit of a cross-examination is turned away from us, and the United States is to begin and go over the whole ground again.

MR. BRENT. I think I have a right.

MR. READ. I have a right to make the conclusion, if it pleases the Court.

MR. BRENT. I think after what has been said I have a right to make some remarks. The counsel has said I am here on behalf of the State of Maryland, to aid in this prosecution. The reason I am here, is a matter that I intend to leave until I shall have an opportunity to define myself more fully before the Court and jury I am here under the instruction of the executive of Maryland, because the people of Maryland feel a deep interest, not in a prosecution or an unjust conviction, but to see that justice is done to the memory of a deceased citizen, and to the laws of the United States, if they have been violated, for she has a kindred interest in them with the rest. I am to transmit official reports to the State of Maryland, and to attend to her interests here. I am not here in distrust of the authorities of the United States, but by invitation of the authorities of the United States; and am free to act as counsel in this matter. I merely wish to state that I do not desire (and I thank the gentleman for having disclaimed it) to bolster up a perjured witness, or because he is confused, or telling a falsehood. The most honest witness, under cross-examination, becomes confused, and his account is often unintelligible. Is a counsel to cross-examine an honest witness, so that it leaves a confused account on the minds of the jury? Is the door of the edifice to be closed, as to further inquiry, and as to the facts of the case? If a witness cannot rescue himself honestly and fairly before the jury and the public, let his testimony fall, and none will be more satisfied than the officers and counsel who represent the United States. I only give the witness a chance to set himself right, if he can do it.

MR. READ. All these re-examinations are cross-examinations. They begin, or ought to begin, (though I do not wish to dictate) by letting the witness tell his own story. If he cannot do that, have they a right to assist him? But if he has gone through his evidence, and they have asked him every question they think proper, and the cross-examination does not lead him from the legitimate purpose, it is not proper to begin a re-examination, in the form of a cross-examination. Because they begin by putting their questions as leading questions, suggesting what has already been said, and not what he intended to say. Under these circumstances, what is the use of a cross-examination? It will be better to let the United States exhaust their leading questions, and then to have our cross-examination afterwards. I submit that this is the only proper way of doing it.

JUDGE GRIER. You seem to differ not at all in theory. You are both right. As to the irregularity of questioning after a cross-examination, the prisoner's counsel is undoubtedly correct. Namely, that you cannot begin to examine him all over again, so that you may have your story repeated again, because it would only bring more last words from the other side. It is also true, as stated by the Attorney General, that where a witness has said something in his cross-examination that conflicts with the examination-in-chief, he has a right to point it out, and see how it has happened, and to see whether he can explain it or not. Because the best witness in the world may, by a sharp cross-examination, say things which are apparently contradictory, which, (if it were asked him) he would be able to explain immediately. That, however, should not be come at by repeating over again all that he has said before. But the United States counsel certainly have a right to point out to him if he appears to have made any mistake, and let him explain what he does intend to say, if he has said two contradictory things. What the nature of the question was, I really don't know.

MR. READ. The question began about George Pownell, of which we asked him nothing. I take that to be entirely irregular, because we said not a word about it.

MR. BRENT. The question was proposed where he had seen him; whether it had been in the neighborhood of Parker's house or at Christiana. He did not make himself intelligible in the cross-examination at all.

JUDGE GRIER. He mentioned some man where he went to buy boots.

MR. READ. We left that upon the examination-in-chief, may it please your Honors.

JUDGE GRIER. If there is anything obscure, the question can be asked.

MR. BRENT. I understand you saw him in Christiana?

ANSWER. I did.

QUESTION. It was at Christiana?

ANSWER. It was.

QUESTION. He had come from the direction of Parker's, had he?

ANSWER. Yes, he did.

QUESTION. About Hanway's being by the or-

chard; when you first saw him, you heard no firing. After you saw Hanway ride on his horse near the orchard, you heard no firing after that?

ANSWER. Not that I recollect of.

QUESTION. He rode up and crossed the field?

ANSWER. I suppose he did.

QUESTION. Did you see any white men running?

ANSWER. There was one came past after I got to to the little house.

QUESTION. Have you ever seen him since?

ANSWER. I don't know that I have.

QUESTION. Was he pursued by a negro?

ANSWER. I do not know whether he was or not.

MR. READ. Does your Honor see what it is coming to?

MR. BRENT. That is all, I have done, sir.

JUDGE GRIER. Have the prisoner's counsel any questions to ask the witness?

MR. READ. No, sir, we have no questions to ask.

Jacob Wood sworn.

MR. G. L. ASHMEAD. Where did you reside before you came down to Philadelphia; and when you were at home?

ANSWER. At Lancaster. At Jacob Moore's I made my home, but I worked at Mr. Cooper's

QUESTION. How far from Christiana?

ANSWER. I do not know. I cannot tell how far.

QUESTION. How far from Parker's house?

ANSWER. There are two farms betwixt it and Parker's house, like.

QUESTION. Do you recollect the morning of the battle in September last?

ANSWER. I mind what morning it was, but I don't mind what day of the month it was.

QUESTION. What occurred to you on that morning? Go on, and state to the Court and jury.

WITNESS. What occurred! I don't understand, what took place?

JUDGE GRIER. Don't give him any Latin; talk Saxon to him. He don't know what *occurred* means.

MR. G. L. ASHMEAD. What took place on that morning?

ANSWER. I was at work at Mr. Cooper's, and was going to take up potatoes, and Mr. Lewis came along and informed me that Mr. Parker's was all surrounded by kidnappers, and I went along with him over there.

QUESTION. What further did he say?

ANSWER. He did not say any thing more. I don't recollect any thing more.

QUESTION. What time in the morning was it when he came there?

ANSWER. It was before breakfast.

QUESTION. Was it before or after sun-up?

ANSWER. It was after sun-up.

QUESTION. After sun-up?

ANSWER. Yes, sir.

QUESTION. Was any thing said at the time about taking potatoes up, in connection with Mr. Lewis?

ANSWER. He told me it was no time to take up potatoes, when Mr. Parker's house was all surrounded by kidnappers.

QUESTION. You went with him over there, did you?

ANSWER. Yes, sir.

QUESTION. What took place when you got there?

ANSWER. First, I seen the Marshal, I believe it is; and Mr. Hanway was on his horse, and the Marshal was standing near him. I believe he was talking to him. I passed them.

QUESTION. Did you pass close to him?

ANSWER. Not right close to him I did not pass.

QUESTION. You did not pass close, you say?

ANSWER. No, sir.

QUESTION. Did you hear any thing of the conversation between them?

ANSWER. No, sir; I did not hear any thing that was said at all, sir.

QUESTION. Did you hear the firing, then?

ANSWER. I heard the noise, and seen the smoke.

QUESTION. How far off were you, when you heard the noise and saw the smoke?

ANSWER. I went to look what was going on, and the firing took place, and it kind o' scared me, and I run away off, towards the barn.

QUESTION. When you first saw Hanway and the Marshal together, where were they?

ANSWER. At the end of the lane.

QUESTION. At the end of the lane?

ANSWER. Yes, sir.

QUESTION. You have said you went towards the barn?

ANSWER. Yes, sir.

QUESTION. Did you remain there at the barn?

ANSWER. I got over into a cornfield, and came out into the road into the woods, alongside the woods.

QUESTION. Was that down in the direction of the creek?

ANSWER. No, sir.

QUESTION. It was not in the direction of the creek?

ANSWER. No, sir.

QUESTION. Did you remain there or leave

ANSWER. I went straight to Jacob Moore's where I got my washing done.

MR. G. L. ASHMEAD. That is all, now.

The witness was not cross-examined.

Dickinson Gorsuch recalled.

MR. G. L. ASHMEAD. State whether that is the coat your father wore on that occasion.

ANSWER. That is the coat.

QUESTION. Have you your vest here, and that hat, sir?

ANSWER. Yes, sir.

Mr G. L. Ashmead here shows the coat of the deceased Gorsuch, and the vest of Mr. Dickinson Gorsuch, and the hat of Dr. Peirce. It was a low-crowned, short rimmed straw hat, with a piece of black ribbon around it, rather narrow. There was a hole, having been occasioned, as stated in the evidence for the United States, by a bullet having passed through just above Dr. Pierce's scalp. The coat presented a shattered appearance near the left arm, and the vest was much torn.

MR. G. L. ASHMEAD. We close the testimony

(with this witness) in this case, on the part of the United States.

MR. READ. Your honors are aware it becomes our province to open on the part of the defence; but as one of our colleagues is absent, (though he will be here to-night) and though we should be very glad to begin, we would much prefer his presence in Court.

JUDGE GRIER. Is he to open?

MR. CUYLER. I have to open, but could not close before the time to adjourn this session, and I would like to have an opportunity of conference with my colleagues.

JUDGE KANE. I believe one of the counsel on each side is absent from public duty.

JUDGE GRIER. I began with an intention to pay ample attention to all sides. The only question is one of time, and the gentlemen of the jury may think I am trifling with their time, for I have been spoken to with regard to a night session, by some one.

MR. CUYLER. I believe it will shorten the matter, as it will give me an opportunity of condensing what I may have to say.

JUDGE GRIER. Notwithstanding my great pressure to be somewhere else, I have determined to give this case a thorough examination, and therefore am disposed to give all parties every advantage. Hence, I adjourned on Thanksgiving Day so that the counsel for the United States might have a chance to prepare his opening, and I suppose it is nothing but fair that I should extend the same to you till to-morrow.

MR. CUYLER. We will get through the case this week.

MR. READ. Your Honors are aware that taking no notes, we have to depend upon the Reporters; and if it were not for them we should not be so far advanced by two days, as we are now. I believe the District Attorney case would have taken three times as long, had this plan not been adopted.

JUDGE GRIER. These young gentlemen are getting of a great deal of importance. I make it a practice now never to take a note, and I never intend to in any case in which I may sit again.

MR. CUYLER. Your Honors will also remember the benefits derived from it in the Woodworth Patent Case.

MR. READ. It is often necessary also to take the charge of the Court when not written, as you can get it in the precise words, or nearly so.

JUDGE KANE. I hope the counsel engaged in this case, now absent in Washington, will, when they return there, after the case closes, suggest the propriety of adding another officer to this Court: to act as Reporter; it would save the United States a great deal more than they would have to pay such an officer for his services during the time he was in attendance.

The Court is adjourned till to-morrow morning at 10 o'clock A.M.

Tuesday, December 2, 1851.

THE COURT OPENED AT TEN A. M.

PRESENT JUDGES GRIER AND KANE.

Empanneled jurors are called and answer to their names.

MR. R. R. SMITH. Mr. John Richardson was excused till this morning, and I have requested him to be here now. He is President of the Bank of North America, and I presented a physician's certificate to your honors.

JUDGE GRIER. Does he wish a further excuse?

MR. R. R. SMITH. He does, if your honors will grant it to him. He is President of the bank, and when the Board is not in session, he is the only one authorized to discount.

JUDGE KANE. Could it not be exercised by proxy?

MR. SMITH. Not readily. If your honors will excuse him on Mondays and Thursdays, which are the discount days of the bank.

JUDGE KANE. He will be excused till Monday: there are others in similar positions, who are excused till then.

JUDGE GRIER. We have made it a rule not to excuse a man merely on account of private business.

MR. SMITH. If I might suggest to your Honors to excuse him till Tuesday, as Monday is the discount day.

Excused till next Tuesday.

MR. READ. I suppose now is the proper time to ask your Honors for a Habeas Corpus to bring into Court the body of Elijah Lewis.

JUDGE GRIER. It will be issued and the Marshal will have him brought up immediately.

MR. COOPER. I understand that it is desirable on the part of the prosecution, and the counsel have requested me to bring it before the Court, to examine a witness whose testimony was overlooked at the conclusion of the case yesterday. I believe it will take but five minutes. It is to prove that at the time of his death, Edward Gorsuch was in the possession of a considereable amount of money, which when the body was found was not in his possession. I dont know who the witness is that proves it. I believe one witness proves both facts.

JUDGE GRIER. Of course, if the counsel had overlooked anything material and the opposite party had not opened his case, we would suffer you to offer it now, if there is no objection to it.

MR. STEVENS. We do object to it.

JUDGE GRIER. The charge of murder would not be affected by a robbery committed upon the body of the man murdered.

MR. CUYLER. We do not object upon the ground that they have closed their case, but upon the ground that your Honor has mentioned.

JUDGE GRIER. I dont think it would add to the case in any degree.

MR. COOPER. We do not insist upon it.

MR. THEODORE CUYLER opened for the defence, as follows:—

May it please the Court, Gentlemen of the Jury. I congratulate you, Gentlemen of the Jury, that we have reached one of those land-

marks in the progress of this cause, which assures us that its end cannot be far distant. The Government has closed its case. What it could prove to sustain this grave charge against the prisoner at the bar, it has proven, and if the evidence has affected your minds as it has mine, you have listened with painful surprise, that a charge so grave has been founded upon evidence so weak. You have wondered, as you listened, that this man has been taken, upon such evidence, from his quiet home, with all its endearments, and compelled to spend so many sad and weary hours in the loneliness of his cell, awaiting an uncertain future, and a trial upon an almost unheard-of charge, to be supported by evidence of the nature of which he scarcely knew.

It will be my duty, gentlemen, before I sit down, to review some portions of the testimony offered by the Government, and to point out to you its total inadequacy to sustain the charge of high treason: to open to you the prisoners defence, and to explain to you those matters, both of law and of fact, which when passed upon by your judgment, will, he confidently hopes, insure his acquittal.

This, gentlemen, is no ordinary prosecution; it presents no ordinary features. Apart from the interest it derives from the fact that it involves both the good name and the life of the prisoner at the bar; apart from the fact that public interest and public feeling are so deeply enlisted; and that so many watchful eyes are upon us to-day; and apart from the serious and unusual nature of the charge you are sworn to try—it has another point of deep interest.

The State of Maryland is here to-day, in the person of her Attorney General, and his coadjutors,—a private prosecutor in a criminal cause. Far be it from me to say, that she thirsts for the blood of this man; and yet I have seen events occur upon the trial of this case, which might almost justify this remark.

It has ever been the merciful doctrine of the law, that the sworn officer of the law, its public prosecutor, was not justified in exhibiting the partizan zeal of private counsel, in pressing for a conviction. His duty was to aid the court in doing justice, to seek the disclosure of the whole truth, whether it make for or against the Commonwealth; in short, to seek mercy, not sacrifice; justice, not a conviction. How has it been in this cause?

Mr. Ashmead, the proper officer of the Government, who brings to every public and every professional duty, as we are of the Philadelphia Bar well know, at once the highest professional skill and the most manly frankness and candor, is in the back ground. Our friends from the State of Maryland, for whom no gentleman entertains a higher respect than I do, are in the foreground. Maryland distrusts the justice of Penhsylvania—she distrusts the faithfulness to their sworn duty of the officers of the General Government. She is here to-day by her own counsel, in what she regards as her own case. As a natural result, we have witnessed precisely what experience taught us we might expect. This cause, involving the momentous issues of life and death, has been tried as if it were a private cause. In a panel of ninety-two attending jurors, the prisoner, entitled to thirty-four challenges, challenged twenty-four—while the Government (exercising a right by the most recent cases denied to a public prosecutor in England) set aside thirty-six jurors. In the conduct of the cause the zeal of private counsel has been exhibited—discharged witnesses have been recalled, and cross-examined witnesses have been re-examined in chief—the opinions and impressions of witnesses have been asked for and put in proofs as facts. And yesterday it was offered and received in proof to affect the prisoner, that by the lying lips of Henry H. Kline, the prisoner and his fellow-prisoner, Elijah Lewis, were charged in the vile profanity of that miserable creature with what Kline knew, and this prosecution admits, was a lie; and his silence (Lewis denying the assertion) is to be tortured into a tacit admission of the truth of that which the prosecution itself admits is a false charge. Sir, I take back my words. The State of Maryland does thirst for blood, or else this cause, inadmissible even in Quarter Sessions practice, would not have been tried.

We mention these things not reproachfully of the Court. From them, at all times, it is my pleasure to admit we have received the most impartial justice, tempered with the truest kindness. It has been so, because we have permitted it to be so. We have permitted it to be so because we knew well the perfect innocence of our client. We had nothing to conceal—but sought only the fullest exposure of the truth—and above all, and beyond all—we knew the strength of our own cause, and we were resolved, here, in this Court, to prove this to be the most absurd and groundless prosecution ever instituted in this or any other Court of Justice? Strong language, gentlemen! Bear with me until I close my case, and so as I sustain these words deal with my client.

And here, gentlemen, I have a word to say for my colleagues and for myself, lest we should be misunderstood—which I will not forbear to say—although upon a topic not spoken of usually in courts, for I am invited to it by the remarks of the learned counsel for the government. In his opening, he spoke most eloquently of the Union, its history, the reciprocal obligations of its States, the high and solemn duty imposed upon us all, lest by any means we should not prize aright its blessings, or be cold or lukewarm in its preservation, or hesitate to cut off the parricidal hand which strikes a blow against its perpetuity.

Sir, I endorse, warmly, cordially, and from my inmost heart, and so do my colleagues, and so does my client, all he said. But, sir, I could not help thinking, as he spoke, that we have come to that period in our history when the value of this Union, and the duty of its preservation, and love for the Union, are so interwoven with our associations, our personal history, our memories of the past and our hopes for the future, that the endurance of the Union runs in with the natural current of the thoughts and

feelings and expectations of every American citizen. It is a part of his being; he is a Union man because he is an American. We are all Union men.

But I have no sympathy with this mawkish squeamishness, this everlasting fear lest every exciting topic should disturb the Union. Let us feel that the Union rests, as it does, below all currents, and deep in the unchanging affections of all the people, and then we shall never fear the open and manly discussion of any question—however earnest the discussion, and however exciting the topic. I have felt free, sir, to allude to this subject, because I could not but feel, as the learned gentleman spoke, that his remarks implied at least that we, of our side, were here, perhaps, to advocate, certainly to defend, acts hostile to the Union. May it please the Court, I am here, and my colleagues are here, for no such purpose; but when we remember the strange and unusual fact, that, in this prosecution the State of Maryland is here, by two gentlemen, (for whom personally, we desire to express the truest respect,) implying, by their presence. distrust of the proper officers, the General Government, and distrust of the justice of Pennsylvania, we feel, gentlemen, and we believe you will feel as Pennsylvanians, that the remarks of the learned gentlemen were not lightly spoken, and that our friends of the other side, designed, however unjustly, to impute to Pennsylvania lack of fidelity to her Constitutional obligations.

Fidelity to her Constitutional obligations. Sir, as a Pennsylvanian I say, the charge of the learned gentleman was unjust. The history of her legislation upon this subject will vindicate her good faith. I will not advert to her legislation prior to 1826, for the learned gentleman did not complain of it; but I commence with the Act of 1826. Sir, it was passed by our Legislature at the request of Maryland. I read from the Journals of the House of Representatives, (Mr. Cuyler here read a lengthened extract, showing that Mr. Goldsborough and others, appeared as Commissioners from the State of Maryland, and were invited to seats on the floor; also further extracts relative to the bill and the agency of these gentleman in its passage.) I read further, sir, that one intelligent member of the House, Mr. Hobart, protested, and the grounds of his protest are those adopted by the Supreme Court of the United States, in Com. *v.* Prigg. (Mr. Cuyler here read the protest.) This then was the much abused Act of 1826, and it was the Act passed at the request of Maryland herself. This was succeeded by the decision in Com. *v.* Prigg, reported in 16 Peters', pronouncing the Act of 1826 unconstitutional, null, and void, and declaring that State legislation on the subject was needless and uncalled for. In strict pursuance of that decision, the Legislature passed the much slandered Act of 1847, and it passed unanimously. Strange that our friends complain of and denounce it. It bears the approving signature of one of my learned opponents, Mr. Cooper, who was at that time Speaker of the House.

Merely as a part of the history of our action, I refer in this connection to the decision of Judge Coulter in Cauffman *v* Oliver, 10 Barr, as fully sustaining our State legislation.

It will appear then that Pennsylvania was ever true to her plighted Constitutional good faith. I will not indulge in recriminations, but I cannot forbear to allude to the Statutes of Maryland which consign to perpetual slavery the free black citizens of a Northern State, who set foot upon the soil, or to the bill which by the morning papers I perceive South Carolina is discussing, forbidding the use of her process or her Courts to citizens of Northern States.

I beg your honors' pardon for this digression, and I will pass at once to the merits of my case.

The defendant, Castner Hanway, gentlemen of the jury, comes here and instructs me, as his counsel, to say, in the strongest and most unequivocal language, that he is, and will prove that he is, an innocent man, most unjustly charged with this high offence.

We will submit to you, a jury of his countrymen, his evidence, and will then ask, not merely a verdict of acquittal, but that, in the full conviction of his perfect innocence, you will restore him to his home, and to the affectionate embraces of his wife, who, as you have witnessed, has so tenderly and truly clung to him as the partner of his sorrows, with a good name, as unsullied as it was before this first imputation was cast upon it.

The defendant, gentlemen, is no dishonored outcast; he is an honest, peaceful, law-abiding citizen, as free of participation in this offence as you who sit in the jury-box; or his honor, upon the bench, who, with yourselves, and, I doubt not, with our friends on the other side, will rejoice, if I shall be able to assure them, that the defendant is indeed an innocent man.

This defendant, gentlemen, is not here through his counsel to defend those sad deeds which disgraced the sweet and peaceful valley near Christiana on the 9th of September last, or by one unkind or reproachful word to open again the yet fresh wounds of any member of that family which suffered so deeply there. It is no part of his defence to defend those who took part in that conflict. His defence is simply that he was in no way a party to these outrages; but as a precaution, I shall pass beyond this line, and added to this, will open to you, that however grave and serious may be and is the offence of those who took part in those outrages, yet it does not amount to the offence charged in the indictment.

The defendant is a native of the State of Delaware, a slave State, where many of his kindred and many of his friends still reside. At five years of age, he removed with his father to Chester county, Pennsylvania. After living there for several years, he removed with his father from this State, for a short time, to Maryland, and then for a number of years to one of the Western States. About three years ago, he returned to Chester county, in this State; and last spring, having been married a few months before, he established himself in his business, which is that of a miller, in Chester Valley, Lancaster county, close to the scene of this outrage. You will thus

observe that he is almost a stranger, in this, his new place of abode; and yet there, as elsewhere, we shall show you he has sustained with all—and I had almost said, above all—a good name in all respects; and, most of all, for peacefulness, quietness, and submission to the laws.

To understand this case, gentlemen, it is necessary that you should know something of the geography of the country where these events took place. Parker's house, the scene of what I call the riot, is situated in Chester Valley, a sweet and lovely spot. The Valley is at this point about one mile in width, and united on either side by hills, at whose bases wind along the main roads. These two roads are connected by a private lane about one mile in length. Parker's house is in the valley, near to one of its sides. It is approached by a short lane leading off from the long lane, and, about forty feet from the entrance of the short into the long lane, bars are placed across the short lane.

This sweet valley was the abode of peace and contentment, until the events which I am about to detail, took place.

On the borders of Lancaster county there resides a band of miscreants, who are well known to the laws, and well known to the records of the Penitentiary in this State. They are professional kidnappers. Not kidnappers in the sense spoken of by the learned Judge yesterday—but kidnappers in the legal sense of the term. These men by a series of a lawless and diabolical outrages, have invaded the peace of this valley—begetting dread in every household, and a general sense of insecurity in every home.

It will be in evidence that in the month of September, 1850, these men entered the house of Henry Williams, and at his very fire side, seized and carried into perpetual slavery, without right and without process of law of any kind, an innocent hired man in his employ. Shortly afterward, in the month of March last, these lawless scoundrels entered as a band of armed ruffians, the house of Mr. Chamberlain, and after posting sentinels about the house, in the very presence of the members of the terrified family, beat to the earth one of his servants, and carried him away. The family traced them by the fresh blood of their victim, to a point on the edge of the woods, where the fresh traces of wagon wheels showed the course they had taken.

Neither of these men were ever returned. I might detail other and kindred outrages, but it will be enough for me to say, that the effect has been to produce every where through this, till then peaceful valley, a general and deep sense of insecurity. In consequence of these occurrences, the blacks exercising but a fair and natural right, armed themselves, and to some extent organised purely for their own protection. Yet there were good men and true in this valley, who nobly exerted themselves to soothe the justly excited feeling of the people, and among them most prominent, was Elijah Lewis. To-day this man is an inmate of a prison—charged with high treason—to be tried for his life—and yet he is an innocent man, as free of guilt as you who sit in the jury-box, or his honor upon the bench.

I come now, gentlemen, to the occurrences of the 11th of September last. On the morning of that day, about sunrise, it will be in proof to you, Elijah Lewis was informed by a witness who will be placed on the stand, there were "kidnappers at Parker's house" And starting at once, as you or I would have done, upon the receipt of such a notice—he, as he passed, gave the information to Castner Hanway. Hanway mounted his horse and rode over, and at the bars met Lewis, who had taken a nearer route across the fields. As they arrived Kline met them, and stating that he was marshal, required their aid. Lewis asked to see his authority and Kline produced the writs. Meanwhile the blacks were gathering fast, and Hanway, pointing out the fact, warned the marshal of the danger of attempting, under such circumstances, an arrest, and advised him to retire. At the same time, and before any firing, they retired. And passing out of the short lane, Lewis followed by Kline, turned up toward the woods, while Hanway rode down the long lane toward the Creek. Before the firing began, Kline had reached the woods, and was, therefore, as it will be proven, away from the spot and from the scenes he so graphically described in his testimony, at the time the firing took place. Yes, gentlemen, we shall prove to you he was away—that he never knew and never saw the events he pretended to detail as an eye-witness, and that even the little of truth, which his lips unused to utter truth, polluted—was told in an untrue and garbled form. To continue the sketch of Hanway's course, we shall show you by proof beyond all doubt—that, perceiving as he rode away, the blacks pursuing Dr. Pierce, he halted, and permitting him to hold by the stirrup rode on, interposing his own body to shield the life of Pierce, from the bullets of the pursuing blacks. Yes, gentlemen, these are the facts—not lightly or inconsiderately told—but such as can and will be proven. This maligned and much abused man, between whom and the United States, you are sworn to pass upon his life and death, interposed his own life to save the life of one of those—whose blood this indictment alleges that he sought, and from the lips of Dr. Pierce, we will prove, that he owes it to Hanway that he is this day a living, breathing man.

Having proven these facts, we shall show you by ample proof, the notorious bad name of Kline for truth, and the high good name ever sustained by the defendant, for every good quality which can do honor to the character of a citizen.

Treason shall consist only in levying war against the United States. Do the facts of the case sustain the charge?

Sir—Did you hear it? That three harmless, non-resisting Quakers, and eight-and-thirty wretched, miserable, penniless negroes, armed with corn-cutters, clubs, and a few muskets, and headed by a miller, in a felt hat, without a coat, without arms, and mounted on a sorrel nag, levied war against the United States.

Blessed be God that our Union has survived the shock.

Sir—It is for a charge of high treason, based

upon such levying of war as this, that we are here to-day. It was for this, that the State of Maryland forsook her high position, and entered this Court as a private prosecutor; thirsting for blood; the blood of this obscure and humble man. It was for this, that a grave Senator forsook his accustomed paths, and is here to-day, asking for blood; the blood of one of his constituents. It was for this, the Recorder of the City of Philadelphia, self-persuaded that high talent and great moral weight, were needed to sustain such a persecution; I beg pardon; prosecution; *volunteered* his services. But sir, the subject is too grave for irony, strange though it may be, and absurd though it seems to me; yet to this man it may be death. But I could not forbear to say, that a charge founded upon a proposition so absusd, that to state it, was to refute it; could not but shock the common sense of all the people. Aye! your common sense, gentlemen of the jury. Be guided by your common sense. You were not asked to lay that aside when you entered the jury-box, or to substitute for it fancies, theories, or the speculations of ingenious counsel.

Indeed, had I the time to trace down in the State trials, the decisions upon these words, I could easily show that from time to time, they have received by English ruling, a narrower and still more narrow meaning; but I venture boldly to affirm, that in no period of English law for the last two hundred years, have events such as have been detailed here in evidence been held to be high treason, except when the law was pronounced through the polluted lips of a Scroggs or a Jeffries. May it please your Honors, I can find somewhere in the English State trials, precedents; alas, too many precedents; to prove that there is no principle of constitutional liberty which we hold sacred, that is not baptised with the martyr blood of some one whom we revere for his noble patriotism, and yet who perished on the scaffold; convicted of high treason for his defence of that high principle. But if I am to come to more recent times, I say both British and American law, will show that a charge of high treason cannot be sustained upon these grounds, and that nowhere have these words, "levying war," received a construction which will sustain the indictment.

I return, sir, nearer to the point of my case. Treason against the United States, we are told in the Constitution, shall consist only in levying war against the United States, and giving aid and comfort to their enemies.

To me, this language seems to be what it ought to be; plain and unequivocal. Left to its natural meaning, it addresses itself as it ought to do, to the easy comprehension of every man. It is part of our Constitution. An instrument which is designed to govern all the people, should receive no strange, fanciful, or unnatural construction, contrary to the simple comprehension of the great mass of those who are governed by it.

It will scarcely be contended that the natural meaning of these words will sustain this indictment.

To escape the difficulty, we are told they are words borrowed from the English Statute, 25, Edward III.; and have affixed to them in English law, by a long series of time-honored decisions, a certain fixed and well-known legal meaning.

I shall have occasion, sir, presently, to call your attention to several of the most recent English rulings upon the meaning of these words —and these will scarcely be found to sustain earlier rulings in English Courts.

Mr. Cuyler here cited a number of authorities, as follows:

21 Howell's State Trials, p. 644.

"Lord Mansfield, Gentlemen of the Jury; the prisoner at the bar is indicted for that species of high treason, which is called levying war against the King; and therefore, it is necessary you should first be informed, what is in law levying war against the King, so as to constitute the crime of high treason. Within the statute of Edward III., and perhaps according to the legal signification of the term before that statute, there are two kinds of levying war: one against the persons of the King; to imprison, to dethrone, or to kill him; or to make him charge measures; or remove counsellers; the other, which is said to be levied against the Majesty of the King, or, in other words, against him in his royal capacity; as when a multitude rise, and assemble to attain by force and violence, any object of a general public public nature; that is levying war against the majesty of the King, and most reasonably so held, because it tends to dissolve all the bonds of society, to destroy property, and to overturn government; and by force of arms, to restrain the King from reigning according to law. Insurrections by force and violence, to raise the price of wages, to open all prisons, to destroy meeting-houses; nay, to destroy all brothels, to resist the execution of militia laws, to throw down all inclosures, to alter the established law, or change religion, to redress grievances, real or pretended, have all been held levying war. Many other instances might be put. Lord Chief Justice Holt, in Sir John Friend's case, says: "if persons do assemble themselves, and act with force in opposition to some law, which they think inconvenient, and hope thereby to get it repealed, this is levying war and is treason." In the present case, it don't rest upon an implication, that they hoped by opposition to a law, to get it repealed; but the prosecution proceeded upon the direct ground, that the object was, by force and violence to compel the Legislature to repeal a law; and therefore, without any doubt, I tell you the joint opinion of us all; that if this multitude assembled with intent, by acts of force and violence, to compel the Legislature to repeal a law, it is high treason."

32 Howell, page 928-9.

"The act of parliament in which are the words levying war which are now to be construed, is of the Statute 25th Edward III. The act runs thus, "when a man doth compass or imagine the death of our lord the king," and so on enumerating some other things which are not now the subject of consideration "or if a man do levy war against the lord our king in his realm" he is guilty of

high treason, the words are "if a man do levy war against the king in his realm." Then the question is, what is levying war against the king in his realm? Now I will read you an exposition of this law, in words which are very short and very clear, and being short and clear, I rather prefer to adopt them instead of my own, which perhaps might not be so clear. "If there is any insurrection, that is a large rising of the people, in order by force and violence to accomplish or avenge, not any private quarrel of their own, but to effectuate any general public purpose, that is considered by the law as levying war." There must be an insurrection, force must accompany that insurrection, it must be for an object of a general nature, but if all these circumstances concur, that is quite sufficient to constitute the offence of levying war.

It must be a public object, therefore tumults which have a private object and in which the parties have in view merely private individual interests are distinguished by the statute itself from attacks on the regal authority of the realm. If therefore, it should appear, as indeed has been contended, that the insurrection or tumult under consideration was only the effect of a prevailing spirit of tumult, violence, or disorder directed to any private object, or anything but an attack aimed at the royal authority of the realm, that would not be high treason. And no person who administers the law, will ever I trust, attempt to confound tumults of the sort I have mentioned with treason, which is an attempt to overturn the established government of the country, as for instance, in order to put a plain case, and in putting which I am using the words of a very great judge;—"if a body of men assemble together, and with force destroy a particular inclosure, for instance, that is not an attack of a general nature; it is a high misdemeanor, but not treason; but if they assemble with force to put an end to all inclosures, that is of a general and public nature and it constitutes treason;" if there should unfortunately be an assemblage of men with force to destroy a chapel or other obnoxious building, that being confined to a particular object, would not be treason: but if the same power was applied to destroy all chapels or all offensive buildings, that has been held clearly to be high treason."

[He referred also to Wharton's State Trials, and read from the rulings in Fries Case, Burr's Case, &c. Wharton's State Trials, p. 481, 584, 589, 590, 634.]

Mr. Cuyler further cited from Howell's State Trials, xxiii. 921, Thistlewood's Case, as follows:

"This is the general nature of the project imputed to the prisoner at the bar; it is important for you to consider whether that project is to your satisfaction proved. The question is, not whether it was intended by these persons, and whether steps were taken to carry it into effect. The improbabi ity of the success of such a scheme is fit matter for your consideration, in weighing the evidence that is laid before you, in order to prove that the scheme exist, or did it not; and is it proved to your satisfaction by the evidence that has been laid before you."

We also read lastly, from the report of the United States *v.* Hoxie, 1 Paine, 265.

This, Gentlemen of the Jury, is the case I open to you. Its appeal is to your common sense, and your reason, as well as to your conscience and your oaths as jurors.

In this appeal I shall not be mistaken. Say by your verdict, that this man is innocent, and restore him to his home and his family, from which he should never have been separated; and my word for it, the memory of your verdict will be to you, always a sweet and cherished recollection.

May it please the Court, I will proceed to call witnesses for the defence.

Thomas Penington, affirms.

MR. STEVENS. Will you be so good as to state to this Court or Jury, any fact which you know with regard to the kidnapping and carrying away of coloured persons in the neighbourhood of the Gap within the last year?

MR. COOPER. Objected to.

JUDGE KANE. Before the alleged overt act?

MR. STEVENS. Yes, sir, before the time spoken of, the 11th of September last, within nine months of the present time.

MR. ASHMEAD. We object to the introduction of this testimony, because in the first place it is irrelevant to the issue, and if it were introduced it would have a pernicious instead of a beneficial effect upon the execution of all law. We have charged that the defendant sought to resist the laws of the United States, and so far as the testimony is before this Court, that process was in the hands of an officer and exhibited to the party on trial, and after perusing the instrument, certain acts took place which were countenanced and encouraged by him. They propose to show that nine months anterior to the 11th of September, there were parties who actually kidnapped, and can it be given in evidence that certain parties did nine months before commit an unlawful act. There is no crime in the world that could not be justified in the same way, and by showing that somebody had done a wrong anterior to it. I say that if you admit evidence that an outrage was committed nine months before, under circumstance not justifiable at all, an outrage which was an outrage against all law; I say, to undertake to try a cause in that way would be to give an impunity to these offences.

JUDGE GRIER. This would be unanswerable if you had indicted this man simply for resisting an officer of government; but when you have accused him of treason, it is a position founded upon some previous conspiracy or agreement. If persons came merely upon the spur of the moment, or whether in open war, and by some previous agreement had been called together, or whether it was in open resistance to the laws of the United States; but it must be shown. We have given you the widest scope to prove either by proclamation or meeting, or a mere publication that it was a levying of war against the United States, or whether it was not, and therefore what is fair on one side I cannot see but that it is fair on the other.

MR. ASHMEAD. Your Honors permitted us undoubtedly to show that there were meetings, and

what was done upon those meetings, with these limitations, that we should connect this defendant with them, or some parties on trial here.

JUDGE GRIER. If you have proved his presence as an overt act, a participation, a guilty participation in it with a large number of other persons, and connect him as accessory to the conspiracy at any time; then he becomes liable for the acts of all other persons concerned.

MR. ASHMEAD. We charged here, that this combination occurred the 11th of September. We have shown that warrants were issued on the 9th. We have proved that they went up there to oppose the laws of the United States; and can this defence go back nine months? If they can go back nine months, they can go back eighteen months. If they can show something within even two weeks, it will be admitted by us; but, to permit them to show that some other parties, not purporting to have any connection with this affair at all, committed a certain outrage nine months anterior to the time this transaction took place, I say it is opening too wide a door for the counsel on their side.

JUDGE GRIER. Is it not an important fact, that a horn was blown, and that these people were prepared to run together with clubs, scythes, corn-cutters, &c., as evidence of a preconcert or conspiracy to oppose the officers of the law.

MR. ASHMEAD. I think it would be, but it must be about that time; and I suppose from the nature of the case, that it must be confined to about the time these occurrences took place.

JUDGE KANE. The difficulty upon my mind is somewhat different, yet, perhaps, included in the same general category of remark. Take the analogous case of a person accused of murder, and upon the question of malicious intent, it being in proof that he went to the place where the alleged murder was committed, bearing deadly weapons, it would certainly be permitted him to show that there was a general sentiment of personal insecurity in the community, which justified him in carrying arms, and thence infer the reason why he had arms. But my doubt is, whether you can be permitted, in the first instance, to examine as to the specific circumstances upon which that general sentiment was founded. Without having heard the learned counsel, it seems to me a legitimate question might be, was there a sentiment pervading that community of such a character as to furnish an innocent explanation of the blowing of horns, and the gathering that followed. If we were, instead, to inquire into the particular grounds of the public sentiment, the field might be so enlarged as to lead us into collateral issues.

JUDGE GRIER. The remarks made are only to call the counsel's attention to the views that present themselves to the minds of the Court at the moment.

MR. STEVENS. If the Court please, your honors need not be informed that the crime of treason consists in acts done, and the intention with which they were done. Many acts may be done which if done with an intention to levy war against the United States, would be treason; but these same acts done without any such previous intention, would amount to an ordinary breach of the peace, or to misdemeanor and murder. The great question to be considered by this court, and especially by the jury is, what brought together these people, some armed and some unarmed. For if they have come together with a lawful intent, and afterwards, even they who came with such intent, committed murder, it is not treason. How then are you to show what brought these people together. The prosecution have given some slight testimony, such as the sounding of a horn about breakfast time, from which I suppose they will ask a jury to infer that there was a previous combination to resist the United States government. Now, what we propose to show is this: That there were in that immediate neighborhood a gang of professional kidnappers, residing there, some of whom had been confined in the penitentiary, and had come out. That they had not only upon one, but on two or three occasions, in the dead of night, invaded the houses of the neighbors, of white people, where black men lived, and black people, and by force and violence and great injury and malice, without authority from any person on earth, seized and transported these men away, and they have never afterwards been seen or known of in those parts. And that in consequence of this, there was a general feeling of indignation against these professional dealers in human flesh, not against lawful authority, but against professional outlaws that thus prowled over and disturbed this neighborhood. And that when the prisoner in the morning (for the first time) came out of his own house, not having heard anything of this, he was informed that there were kidnappers trying to kidnap Parker, whom it was supposed was the object of the attack. And that in pursuance of such information, and with a full knowledge of the repeated acts of outrage and kidnapping in that neighborhood, he went to the place where he did go. We do this to show what might have brought him there, which is one essential part of our and their case. And we do it to show, may it please your Honors, that if anybody should suspect in that neighborhood that there was a covert term or a slang phrase used, and that kidnappers did not mean kidnappers, to show that it did mean those who followed that business for a living.

We do not care, if your Honors please, (and I suppose the prosecution may have their choice,) whether they confine us to a single case, or ask to go on to more. We do not want to employ a number, but we want to show that they are not idle rumors merely, and without foundation, got up in a certain way by anybody, but that they are rumors that proceed from honest people. My friends on the other side seem to think these things are mere pretence. It is well founded that these kidnappers were caught in the very act of dragging a man off in chains, never to be brought back. It is to show the reason why a whole neighborhood might be ready upon a notice given (upon the repetition of such a crime as that) to go to a place, and whether after get

ting there they committed anything that is to be considered an outrage of the law, we shall be prepared to show by other testimony. We want to show that he went there with pure and laudable motives, and we will undertake to show that what he did afterward he was there, was honorable, humane, and noble.

MR. READ. Your Honor's will allow me to add a few words to what my colleague has so forcibly stated, particularly upon the question of time. The Fugitive Slave Law was passed in September, 1850. The excitement whatever it may have been has of course occured since that period. That is, the excitement supposed to have existed upon one side of the question, and to which the attention of the United States, I think so unsuccessfully, has been directed. Our object now is to show that with a law which your Honors must say, however constitutional, was not a popular law; one which has excited feeling in the Northern States and in the minds of the largest portion of the community, and who however not taking part with the Abolition feeling as so considered in the southern states—yet there are many conscientious minds who do not believe that it was within the constitutional power of the Legislature. It was declared in the halls of Congress by some of the most eminent men living in the Southern States, that they did not consider it wise or expedient. Under these state of circumstances whether it be competent to show there was a sort of consternation in Sadbury township, if it does not extend beyond it, and where the other side have tried to show it existed—namely a combination to resist this law of 1850.

We propose (within a period of time of about a year,) prior to this accident, excitement, or riot, or whatever term you choose to apply to it; we propose to show a distinct state of facts, occurring in the same neighborhood in this valley, to account for this feeling of insecurity on the part of the white and colored men. And it is for the purpose more particularly of ascertaining why the prisoner is upon this trial. He had a legal right to go and see this difficulty. He had a right to go to see that the parties were armed with the proper process of laws. And we shall contend that having gone with this rightful purpose, and for the purpose of showing that he subsequently left the ground in consequence of ascertaining that they had legal process, and that there was no right to interfere with them in any way. How shall we do this? These matters that occur in a country village months before, do not pass lightly over the minds of the people. They do not escape the recollection of the inhabitants of a solitary valley. It is like an event of yesterday in the city of Philadelphia. That which is passed over and forgotten in Philadelphia, remains there as a story for years, until effaced by other subjects and events. There is a portion of Massachusetts lying near a place called Halifax, where the only events they converse about are the events of the Revolution. I do not say that this is the condition of Sadsbury, but it shows that in small towns or villages such events, and the impression they have made, do not fade away. Our object is to show that the individual who gave this notification to Castner Hanway, also believed that these people were without legal process, and that they went to attack Parker, and not these individuals. We propose to follow these things up by a foundation, which is for the jury undoubtedly after all, on the question of intention, to say whether he went there with a perfectly legal and upright intention, and of course that there was no treasonable conspiracy before had. Suppose the United States had shown meeting after meeting. What did they ask yesterday? They asked for the resolutions of a meeting in Chester County. Suppose they had asked for the resolutions of a meeting held in Sadbury township, and we had produced them, are we not allowed to show an act of violence creating this feeling of insecurity.

Persons had come there without a process of law, and without the masters. They were men of notoriously bad character, and these persons had taken a man out of the house of the son-in-law of the gentleman now in the stand; and had alarmed the wife and its inmates. They went into the house with pistols, and created an outrage, which of course was spread through the whole country. What is the best means? It is to prove the identical effect of such an outrage. Can there be any doubt of it? Why then should we not go to the fact? Why then should we not give evidence of a particular fact, that the Court and and the jury may judge of the consequences of that fact. And how important it is that we should connect with the foundation of the rumors in this country. There are two. One perhaps will suffice. The latest one, which will make the strongest impression. It was committed in the house of one who was a respectable farmer, a white man, respectably connected, and whose father-in-law lives in Baltimore at this day, and who is come here for the purpose of attending this trial. We want to show it was no idle rumor. I am speaking of the fact with regard to Hanway, the white man who in this peculiar case is tried for treason. The question is, whether he was or was not concerned. Suppose we prove conclusively that such a party as were the first party that came up, who, I am sorry to say, went under the cover of night, with a disguised guide, and under circumstances far more natural to suppose appeared like treason, and which has been followed by circumstances which we all so much deplore. If we follow it up by showing that the sole object of the prisoner at the bar was to go over, and if these persons could show no authority, to interfere, and if they had an authority not to interfere, I say it is important to us, and we are desirous of having the facts as they occurred.

MR. ASHMEAD. Upon one point I have found that I am incorrect, and that the law is ruled against us; and the law is that the day is not material, but the question of relevancy, may it please the Court, still exists.

MR. COOPER. I think the authority produced by my colleague here does not affect the question as to time, nor has it reference to the evidence which is proposed to be given here on the part of the defence. The question, as I understand

it, is whether the day laid in the indictment is material or not. And on deciding that point, Lord Holt said that acts tending to prove a conspiracy at any time might be given in evidence.

We do not pretend to deny that. I suppose that is perfectly settled. There is no doubt that the law is so, that if the conspiracy commenced years ago, if the party on his trial here had connected himself for instance with a society, years ago, to violate any particular law, and if it be connected with the transaction charged against him in the indictment, it may be given in order to show the intention. But that is a very different thing may it please the Court from giving the acts of other persons entirely unconnected with the transaction which is the foundation of the charge. Now I deem that part coming from the learned counsel, who by the discussion for the defendants has stated what would be irrelevant, and that is, that Lewis who went to Hanway on the morning of that transaction to give him notice that there were kidnappers at the house would be evidence. But I do not suppose that that which happened nine months previously is at all relevant in this case, and that an outrage committed upon some citizen in the neighborhood should be given in evidence at this time. This is a distinct charge altogether, and altogether unconnected with the fact proposed to be proved, and therefore I cannot see the relevancy of the evidence, or how that it would prove the intention with which Hanway resorted there on that occasion. Take the intervening fact that Lewis called on him in the morning, that would be enough to justify him in going there if he acted properly when he was there. But to go away nine months to prove that there had been kidnapping in the neighborhood is no ground from which the jury can infer an intention, whether of crime or inteferance to prevent crime on the part of the prisoner. This is proving a particular act of other persons, and I cannot see its relevancy to this case. I cannot conceive from the opening made by Mr. Cuyler how nine months previous to the passage of this act, any thing that transpired then, can affect this issue.

Mr. Stevens. It was in February.

Mr. Cuyler. It was in January.

Mr. Cooper. Then it was since. However, the master would have had a right to seize and carry away his slave, and he would not be liable for any breach of the peace, or any misdemeanor in so doing. Then it is this view that the counsel took of it, and the case presented by my colleague. I think has reference entirely to another state of facts. I will read a paragraph, which is the syllabus of the case now before us. We have also a decision to that point in the case of Burr. After the overt act was proved, it was decided that other overt acts, although committed out of the district, in another district, (for instance, in the district of Kentucky,) might be proved.

But that has no reference to the state of facts. such as is presented by the prisoner's counsel, It has reference only to the fact, that the conspiracy, however far back it extends, may be given in evidence, and all the acts in relation to it, may be presented before the jury on trial of the cause.

Judge Grier. The United States, in this case, must endeavor to show, or will argue, (I cannot say whether correctly or incorrectly,) from certain premises, a certain intention. They have given evidence, that a negro or mulatto went down and said that kidnappers were abroad, and delivered a letter containing certain hieroglyphics, and with a notification about *kidnappers*, as they call them; they might argue from this an evidence of conspiracy in the whole neighborhood. But these men might not have understood it so; and though masters were there with proper process to arrest a runaway, I think it will be proper for the defendant to show, that kidnappers had been about, and there was a degree of insecurity among the free negroes who resided in that neighborhood. There are numerous ways in which it might be shown, that such was a public rumor and so believed. There may be many ways of proving such a belief, and none better perhaps, than by proving the facts, upon which the belief was founded; and if the belief existed, it might be proved, though not founded on facts.

Suppose the sheriff came to my door, and I fired at him out of my window and killed him, under such circumstances you might infer I did it with the intention to murder an officer of the law. But suppose I could show, that a few nights, or even months ago, a person had broken into my house, and committed a rbbbery, would you not infer from that fact, that my mind was bent upon something else, and far from my intention to murder the sheriff?

For that very same reason the same state of facts might justly apply to a case like this, and where a whole neighborhood might be ready to come together in a case of notice given that kidnappers were abroad, and not for the purpose of a conspiracy to resist the laws.

All the exceptions they have taken to the law of 1850—I say notwithstanding all the exceptions taken with regard to that law, it was the first law that properly protected the colored man. Never was a law in my opinion so unjustly treated with odium. It is the first that gives the black any security. Henceforth the arrest of the master can be distinguished from the seizure of the kidnapper; and no apology left for opposition, through mistake of the character of the person making the arrest. It is the opinion of the Court that the evidence will have to be received.

Mr. Stevens. Where did you reside last winter?

Answer. At my son-in-law's in Sadsbury township.

Question. Will you be so good as to state any fact which you know relative to carrying off a colored man last winter, and at what time?

Answer. It was in the month of January. I do not know the exact day of the month. In the evening a little after night my son and two of my grandsons were out of doors; they came into my

house and told my son-in-law there were two men outside who wanted to see him.

MR. ASHMEAD. Is all this conversation to be given in evidence?

JUDGE GRIER. He is going to relate a certain fact which might have created a certain feeling in the neighborhood, and there is no use of making any objections to it. The best way is to let a man go on and tell his own story his own way, and he will always get along the quickest. It will do us no harm, if it does us no good, so let it go.

WITNESS.—These men told the boys they wanted to buy chickens, and that they had heard my son-in-law had chickens to sell. He went out and talked some ten minutes, I suppose, and told them he had not any. They came up to the porch and they talked there. One of them looked in at the window. I was inside. I did not go out of the house at all this time. But one looked into the window, and the black man was sitting behind the stove. They couldn't help seeing him: they then went away, and in a few minutes after they were gone away, neighbor James Ray came running to the house, and told my son-in-law, his brother John had been out from home, and had fell down dead as he entered the door of his own house. This created a great deal of alarm in the family, and my son-in-law went immediately to the house to see as to what James came for him to do. I remained there about half an hour, as near as I can recollect; some person knocked at the door. I told them to come in. Two persons entered abreast as near as I could tell, and asked whether such a man, calling the man by a different name from what he had went by, (I do not recollect what they did call him,) and before I had time to make any reply they made no halt. I was standing between the door and the black man. He was sitting behind the stove with his boots and hat off. They passed right by me to him, and presented a pistol to his head, and told him they would blow his brains out if he made any resistance. I did'nt speak to them at all after they entered the door. A struggle ensued between the black man, and then there was others followed, but I don't know how many by the way, and a struggle ensued between those. I suppose the black man resisted: they were between him and me, and I could not see what was going on. I was sitting at the table reading, and when they came up I passed a little towards the door. I suppose five or six had come in, and just as I came near the door there was a person came in, near right facing me: he had a stick in his hand (opening his hands) about that length, and I seen something sticking out partly from the cuff of the coat and partly inside. I judge it was a slung shot. He passed right by me, he struck the lamp and it fell on the floor and went out; and after that it was dark, and I do not know or I could not tell much what passed between the parties. But a few minutes after this, (not more than two,) my daughter, who was Chamberlans' wife, it was right over the kitchen, and she was right over head when they came in first: she come down and begged of me to come up stairs, she thought I would get hurt, and appeared to be frantic with fright. I accordingly went up stairs, and remained there till these persons left the house. They were about dragging the man out to the porch when we went up stairs. They bound him and dragged him off. I didn't see them bind him.

JUDGE GRIER. How many were there?

ANSWER. I suppose some six or seven in the house, and some outside, I suppose.

MR. STEVENS. Did you track them?

ANSWER. After they went away, as we supposed, I went down and got a little light, a candle, and examined the floor where they had him on the porch. I found large quantities of blood along on the porch floor, and next morning when I got up, the first thing I done, I tracked them by the blood. It was along the road they dragged him, along to the woods; and after I had passed on, it was there where it appeared there had been a horse and carriage standing; and that is about all I know.

QUESTION. Did you know any of those persons?

ANSWER. I know one of the persons that came in; the one I speak of, that came in last.

QUESTION. Who was he?

ANSWER. He goes by the name of Perry Marsh.

QUESTION. Where does he reside?

ANSWER. I understood he resided in the neighborhood of the Gap, and there he kept an oyster house. I never was in there. I have been at the Gap many a time.

MR. COOPER. What was the name of your son?

ANSWER. William Marsh Chamberlain.

QUESTION. Did you know the name of the negro that was taken away?

ANSWER. I understood that he had lived with him in the neighborhood of eighteen months, but he had been away previous to this circumstance. He had left my son-in-law some weeks before; I dont know how long, and was away about three weeks in consequence of being afraid of remaining in the neighborhood for fear of being taken up, for it was reported that that the free blacks were no safer under existing circumstances than the runaways were, and he went away, but he had returned after the excitement was a little over, and was living there again.

QUESTION. How long had he been away from your son-in-law from the time when he first came there?

ANSWER. About eighteen months.

QUESTION. Had he been in the neighborhood before that?

ANSWER. Not that I know of. I did see him once at Penningtonville previous to the time when he went to live with my son-in-law.

QUESTION. Do you know whether he was a free man or a slave?

ANSWER I dont know anything about it, sir.

QUESTION. You stated you didn't know the names of any other persons except Perry Marsh?

ANSWER. I do not know anybody else that came into the house.

QUESTION. Had you seen them before?

ANSWER. I do not know that I did; I did not recognize any person that I knew among them.

QUESTION. Did you not know that this black man was a runaway slave?

ANSWER. I did not know whether he was or not.

QUESTION. Didn't you know?

ANSWER. I did not know. I heard it said he had come from Maryland, but I do not know any thing about the fact.

QUESTION. You know not whether he was, or not, but it was understood that he had come over from Maryland?

ANSWER. I heard he had. I never talked with anybody about him except it was in the family. I do not know the general impression.

QUESTION. Were not these persons that came the masters and his agents?

ANSWER. I do not know who they were. I knew but one man, whose name I have mentioned.

QUESTION. Didn't they state he was a runaway slave?

ANSWER. I heard no statement at all as I told you before, (Mr. Cooper. Well, then, don't get angry.) they said nothing to me, nor I to them, except the question they asked, when they came in at the door.

QUESTION. What name did the negro go by?

ANSWER. John, is what they called him there.

QUESTION. Had he any other name?

ANSWER. I never heard of any till they came and asked for him by another name. It was the name they called him.

QUESTION. Did they state there was such a man, by a name different from that of John.

ANSWER. They only asked if you have such a man, or is he in the house.

QUESTION. Was that question addressed to you?

ANSWER. I think it was, but I made no reply.

QUESTION. Did you know that he had gone by that name before?

ANSWER. No, I didn't. I never heard of it before, his having another name. I didn't know any thing about that.

QUESTION. Were there firearms used on that occasion?

ANSWER. They presented a pistol to his head. I didn't see any thing but one. Those two persons who first came in, I saw no other firearm?

QUESTION. You stated that was in January, 1851?

ANSWER. Yes, sir, that was the time, the day of the month I do not know it. I do not recollect, some say it was the 13th

QUESTION. State if it was not generally understood, in the neighborhood, he was a fugitive slave?

ANSWER. I do not know any thing about that, for I never heard anybody speak of him out of the family at all.

QUESTION. In the family?

ANSWER. They have never talked to me whether he was a slave or not.

QUESTION. You mentioned you thought you had heard him spoken of as a fugitive slave. Who was it?

MR. STEVENS. As coming from Maryland.

MR. COOPER. What took him away during the time he left your son-in-law, the beginning of those three weeks.

ANSWER. What I understood was the cause of his going away, he became alarmed, him and others, in consequence of a black man being kidnapped in the same manner that he was, at a house about a mile from my son-in-law.

QUESTION. Do you know there was a man kidnapped there, as you call it?

ANSWER. I do not know that there was. I can not say in regard to that.

MR. BRENT. How long have you lived in Baltimore?

ANSWER. Since the first of September.

QUESTION. How long had you stayed at your son-in-law's at Sadsbury?

ANSWER. I had been there about two months.

QUESTION. Before last January?

ANSWER. Three months it might have been.

QUESTION. How long had you known this colored man?

ANSWER. Nearly from the time he first came there to live. I had seen him at different times when I was there.

QUESTION. How long before he was kidnapped?

ANSWER. Eighteen months.

QUESTION. Were you present, when he first came to work at your son-in-law's?

ANSWER. No, sir.

QUESTION. Not present when he bargained, were you? or when he first came to see your son-in-law?

ANSWER. I didn't live there then.

QUESTION. In what capacity did he work?

ANSWER. As a laborer on the farm.

QUESTION. Were other blacks in the employment of your son-in-law?

ANSWER. He didn't keep but one.

QUESTION. At the time he disappeared before being kidnapped, how many blacks left at the same time?

ANSWER. There was a number went away.

QUESTION. Didn't the greater part remain?

ANSWER. There was several went away.

QUESTION. Did many remain?

ANSWER. A great many remained who didn't go over. There was a great panic among them.

(MR. BRENT. What you call a "stampede.")

QUESTION. Can you tell something about the struggle?

ANSWER. I didn't see how it went on, they had him on the floor.

QUESTION. Was there any resistance before he fell, on his part?

ANSWER. I do not know whether there was or not.

QUESTION. I understood you to say he re sisted?

ANSWER. No, I didn't.

QUESTION. The black man struggled, did I understand you?

ANSWER. I say that a struggle ensued between him and the parties.

QUESTION. Then you don't want me to understand the black man struggled?

ANSWER. There appeared to be a struggle taking place between them, and after they had broken a chair into four or five pieces.

QUESTION. Did you see them tie him?

ANSWER. I did not see them tie him because I could not see; there was no light.

QUESTION. When these men first came there, they inquired for your son-in-law?

ANSWER. When them two men I spoke of came there, they told the boys they wanted five chickens, and the boy came in and told his father.

QUESTION. You didn't hear the conversation between them?

ANSWER. No, I didn't hear.

QUESTION. From the position on the porch, you think they must have seen this man sit behind the stove?

ANSWER. They could not help but see him.

Henry Rhay is called and sworn.

MR. STEVENS. Inform the court and jury, whether last January, the night an outrage was said to be committed at Chamberlain's, you went there, and what you saw?

ANSWER. About eight o'clock, I do not recollect the day of the month, it was on Monday evening in February, I came along about eight o'clock, I overtook a company at the end of Marsh Chamberlain's lane; I thought there was about half a dozen; I came up and one came up to me and said, "Say nothing;" he had something in his hand I took to be a pistol, I was not certain, and I told him I would say what I pleased, and that was, that they were after no good. I was about to leave, and one of the men in the company said they were going to Marsh Chamberlain's, to take a black man.

QUESTION. Who was the person that had a weapon in his hand, and told you to say nothing?

ANSWER. Perry Marsh.

QUESTION. Did you know any other of the party?

ANSWER. Yes, sir, one more.

QUESTION. Who?

ANSWER. William Bear.

QUESTION. Where does he reside?

ANSWER. Three or four miles from the Gap tavern.

QUESTION. What county was it, Lancaster or Chester?

ANSWER. Lancaster; it was a new township adjoining Sadsbury.

MR. BRENT. How far from Parker's house?

ANSWER. About three miles.

QUESTION. You didn't say that he held a pistol to your breast?

ANSWER. No, sir; he raised it up; I am not certain whether it was or not; it was a weapon; I am not too certain what it was; I could not positively tell.

QUESTION. He told you to say nothing?

ANSWER. Yes; and I told him I would say what I pleased.

QUESTION. Did you know the colored man that they took from his house?

ANSWER. I never should know him if I saw him; I have seen him, but not to know him.

QUESTION. How many did you see in company?

ANSWER. About half a dozen.

QUESTION. All you know lived in that township?

ANSWER. No, sir Perry Marsh lived near the Gap tavern. I do not recollect of him having any regular home.

QUESTION. Where did you generally see him?

ANSWER. About the Gap sometimes.

QUESTION. Then, all resided in Pennsylvania that you knew of?

ANSWER. Yes, sir; and the others, whether they were strangers or not, I could not say. I did not see their faces.

QUESTION. How long did you reside in that neighborhood?

ANSWER. Ever since I knew any thing at all.

QUESTION. Do you reside three miles from Parker's house, yourself?

ANSWER. I reside near three miles.

QUESTION. Were you there at all on the day of this transaction?

ANSWER. No, sir.

QUESTION. You know nothing about the transaction?

ANSWER. No, sir.

QUESTION. Do you know of any meeting, large or small in that neighborhood, on the subject of the Fugitive Slave Law, as it is called?

MR. STEVENS. I object to this testimony; it is testimony-in-chief if testimony at all.

JUDGE GRIER. I do not know that in a cross-examination you can try to make witnesses for yourself in entirely different matters. Cross-examinations must have reference to examinations-in-chief, and the subject matter produced by them. If the witness knows any thing for you, you ought to produce him as your witness, and not make him your witness by cross-examination on entirely different matters. It is irregular to cross-examine a witness, except on the subject matter of his examination-in-chief; if you want the witness, you should produce him yourself.

MR. BRENT. We will reserve it.

JUDGE GRIER. You have already made your case upon which the United States must stand or fall. You have a right to cross-examine, to show how far the defendant's witnesses have told the truth, and to bring rebutting testimony; but not to start new subjects with the cross-examination of their witnesses.

MR. G. L. ASHMEAD. You have said that Wm. Bear resided 3 or 4 miles from the Gap Tavern?

ANSWER. About three or four.

QUESTION. On what road?

ANSWER. On the way from the Gap to Strasburg.

QUESTION. What direction is that?

ANSWER. West from the Gap Tavern.

Mrs. R. A. Chamberlain is called and affirms.

MR. STEVENS. Inform the Court and Jury what took place at your house in January last, relative to taking a colored man away?

The witness here was unable to speak on account of a disease of the heart to which she was subject.

MR. STEVENS. When you feel well, just state the facts to the jury.

WITNESS. I reside in Sadbury township, Lancaster county. There was a set of men came into the house and knocked the colored man down and beat and abused him in a cruel manner. It is not necessary perhaps to say, that I was up stairs at the time, and by means of a stove-pipe-hole I saw all that was done. I saw them present a pistol to him, and then I came down stairs. I have been very much injured by it, and I have never been well since.

MR. COOPER. I will ask you one question, madam. Was there any light in the room below?

ANSWER. Yes, sir, when they first came in; it was soon knocked out.

QUESTION. You saw the man knocked down. What was he knocked down with? Did you see him struck?

ANSWER. I did not. I thought it was a pistol. I cannot tell.

QUESTION. Are you sure the weapon you saw was a pistol?

ANSWER. Yes, sir.

QUESTION. Do you know in whose hands it was?

ANSWER. No, sir.

Miller Penington was called and sworn.

MR. STEVENS. Please to inform the Court and jury, what you know of the transaction at your sister's in Sadbury township, relative to the taking away of the colored man.

ANSWER. The 13th of last January, there was about six or eight men came to my sister's house and took away a colored man.

QUESTION. State what you saw with regard to it.

ANSWER. The men came to the door, and knocked. Father was sitting down to the table reading. He spoke up, and says to them "Come in." They come in two of them abreast. When they came in, I ran up a pair of steps, to run to a neighbors, but I was headed off by a couple o men, who came round the house.

QUESTION. How many did you see outside?

ANSWER. Two.

QUESTION. Which side of the house did you go, the same side of the house they came in, or the back side?

ANSWER. The North side; they came in on the South side.

Elijah Lewis, is called and affirms.

MR. G. L. ASHMEAD. Mr. Ashmead is absent. I understand there will be an objection to this testimony.

JUDGE GRIER. If he is away accidentally, we will detain the witness: but if he is attending to business in another Court, the testimony must go on.

MR. BRENT. It was understood that Mr. Ashmead would offer an objection to this testimony. The inquiry will be, whether this witness is interested in the present record, as an instrument of evidence in any other suit or prosecution now pending. In the present case, the indictment charges Castner Hanway of having confederated with certain persons, to the grand jurors unknown. If the witness is interested in this record, and that it can be read out to the satisfaction of the Court, he is an incompetent witness to the obtaining such a verdict. I hold an indictment certified by the District Court, for the next term of this Court, in which Castner Hanway, Elijah Lewis, and Joseph Scarlet are charged with levying war with the United States.

There is also another indictment, in which all these defendants, Hanway, Lewis, and Scarlet, and all the colored persons, are jointly charged.

The point sbbmitted is this. If Elijah Lewis shall give testimony in behalf of Castner Hanway to this jury, which will prevent a verdict of capital punishment in favor of Hanway, whether that testimony will not enure to the acquittal of Lewis on both these joint indictments; Hanway cannot certainly be tried again.

He can not again be put upon his trial upon this same charge, if the indictment charged is overcome by the testimony of the witness, and if the result of this trial be such between Hanway and Lewis, as to acquit Hanway.

He can not again be put upon trial for the same offence, and the result must necessarily be that it will acquit Lewis from both these indictments for the same offence, and once being acquitted of the offence charged, he cannot be compelled to go before another jury. Therefore I submit that Elijah Lewis, being directly interested in this record as an instrument of evidence, that he will be giving testimony to procure an acquittal for himself in these joint indictments. The authorities upon the point I will refer the Court to, are to be found in Greenleaf on Evidence, vol. i. p. 404.

I hold, if your honors say that this record will form a single link in the chain of evidence in this case pending against Elijah Lewis, I now contend he is an incompetent witness, and, unquestionably, the indictment charges a joint offence between him and the prisoner on his trial. If Castner Hanway be tried and acquitted of this treason, and a verdict be procured by Elijah Lewis, so far as his evidence is tenable, I submit to your honors that he is not an impartial witness.

I presume upon a separate trial of A, B could not be a competent witness, except the acquittal of A would be to acquit B, joint offences being charged, A must be proved, and one of the parties being tried and acquitted of that offence, the other could not necessarily be guilty of the charge. I hold it to be perfectly clear, therefore, that although in this present indictment Elijah Lewis is not named; although the other conspirators are said to be unknown, yet, in point of fact, if this be the same offence and the same prosecution, it will not be proper that Lewis should be a competent witness on this trial of Hanway.

JUDGE GRIER. Suppose you indicted 100 persons for treason, could not a jury find one portion guilty and another portion not guilty.

MR. BRENT. I do not deny that position.

JUDGE GRIER. Then if one had been tried, and condemned or acquitted, would that affect the others?

MR. BRENT. On a joint indictment.

JUDGE GRIER. Suppose you have got 30 or 40, what reason is there if a jury find one guilty, that the others should not be acquitted?

JUDGE KANE. I would suggest further: supposing there were many indicted for treason, and on their trial together, and no evidence given against one of the defendants, could not the Court direct a verdict of acquittal as to him in order to make him a witness for the defence?

MR. BRENT. I presume the Court would have to direct an acquittal in order to qualify him as a witness. Here there have been no verdicts, here is a party brought into Court to testify for a defendant who is indicted with him. I agree that where there is a joint offence charged, that perhaps the acquittal of some would necessarily acquit the rest. But your honors will perceive this. There are twenty. Lewis is indicted with having conspired with twenty named conspirators. Is he a competent witness to give testimony "ad seriatim," and thus acquit himself and the rest of the conspirators? that is the inevitable effect. Here is Elijah Lewis indicted for having levied war against the United States in combination with certain named persons. Can he be convicted in that indictment, if every one has been acquitted? If he is competent to testify in the trial of Castner Hanway, and acquit him, he is competent to testify upon the trial of any of the others and acquit them. This is necessarily inevitable. Again, if Hanway is acquitted in this trial, he is no competent witness for Elijah Lewis, he is no witness for him on his trial. But if Hanway is convicted, then Lewis is deprived of the benefit of his testimony.

But, I put it upon the ground that he is indicted in two indictments, one associated with all, and the other associated with Scarlet and Hanway alone. Of course he has an interest to defend both, in a crime that if convicted, the penalty is death. Now shall he in detail, by his own testimony, acquit each one of his colleagues in the offence charged. Shall he acquit Hanway, and then strike Hanway's name out of that indictment; shall he give testimony which shall strike Scarlet's name out of that indictment?

This bill charges Lewis with the same offence as these, both of whom are acquitted. If I am right in this, though I do not wish to exclude any evidence on the part of the prisoner, although he is said to be "particeps criminis," and I only suggest whether he is not an incompetent witness in this case under such circumstances?

JUDGE GRIER. Could you find any precedent that by sending up another bill of indictment including the witness jointly with the prisoner and others, you can thus deprive the prisoner of his witness. Is there any such instance to be found in the books of reports?

MR. COOPER. Perhaps the Court may derive some light from a precedent I hold in my hand, where approvers and accomplices who are indicted are reserved witnesses under the same rule. Formerly, certainly it was the law that an accomplice who turned approver could not be examined until he first confessed himself guilty of the offence. It was necessary in the first place he should confess himself guilty of the offence before being competent to give evidence for the Crown. It was regarded in a certain species of offences that on the ground of policy it was necessary that such evidence should be reserved. But I believe it never was received until the approver in the first place had confessed himself guilty. I will read a paragraph from McNalley on evidence, page 125, top marginal page 124. (Reads.)

I suppose the law is the same still, I know of no change, I do not see that there has been a change, the next paragraph states the law being still in force. (Reads.)

If we are right, he cannot be a witness, and for the same reasons also under the rule that was suggested by my colleague Mr. Brent. Because that the acquital of others under certain circumstances (in this it would be so,) enure to his benefit. The record would enure to his benefit and therefore it was necessary in the first place, he must confess he was *particeps criminis*, and thus being admitted to mercy on the part of the Court, he could be used as a witness, but until he did confess they would not allow him to testify, so that it would enure to his benefit by the acquital of others and thereby acquit himself. That is all I have to say upon the present subject, as I have not prepared myself for it.

MR. BRENT. I have an authority. It is a decision to be met in 5th Espinasse; it appears to be confined to conspiracy, but not to offences which could be committed severally. For instance, with regard to assault and battery, which does not require a conspiracy, I do not think it would be right to deprive a party of a witness by procuring a joint indictment. But where the combination is the gist of the offence, and where a party cannot be guilty unless he has conspired with certain named individuals, I hold that this party is not a competent witness, because if they are proved guilty, he must also be proved guilty, as in this case of treason.

JUDGE GRIER. Suppose three were indicted for a murder, could not two be guilty and one innocent?

MR. BRENT. Unquestionably, your honor; for one man I imagine could not levy war against the United States.

MR. STEVENS. One old woman could.

MR. BRENT. I have nothing to offer, except the case of Lavay.

MR. READ. That is not law. You will find on p. 68, in Phillip's Reports, that not to be law.

MR. BRENT. I only contend it to be in cases of combination.

MR. ASHMEAD. There is a case which is decidedly analagous, which was decided by Judge King. It was a case of conspiracy, where three parties were jointly indicted, and an application was made that one of the defendants might be produced to testify for one of the others. Judge King said,— (Reads from Ashmead's Reports.)

MR. CUYLER. That was a case of a joint indictment.

MR. ASHMEAD. Yes, sir.

JUDGE GRIER. I think they have not brought any precedent to support this proposition at all.

MR. READ. They cannot find one at all.

JUDGE GRIER. Having indicted the prisoners severally, you cannot deprive one of them of the testimony of his fellow, by afterwards having a joint bill found against them. The position of the witness goes to his credibility, and not to his competency. The jury must judge of its value.

MR. READ. Not adding to all your Honor's decisions, but since that, I have received an English law magazine for November, in which they discuss the New Act of Parliament on Evidence, in which anybody is a witness under these circumstances.

JUDGE KANE. In the common law there is this distinction between conspiracy and treason, that conspiracy is an offence essentially joint, and there must be a joinder in the indictment, and a conviction of more than one to support. Treason may be committed severally, as well as jointly, and one may be indicted and convicted alone.

MR. READ. I refer to the Statute of Edward the Third.

Elijah Lewis is affirmed.

MR. STEVENS. Will you be so good as to state all you know relative to the transaction at Parker's house on the morning of the 19th of September last, so far as affects Mr. Hanway. Begin and state in your own way, the transaction as far as you know it.

WITNESS. On the morning of September 11, about sunrise, or a little before, Isaiah Clarkson came to my house and informed me that Mr. Parker's house was surrounded by kidnappers; that they had broken into the house and were about to take him away, and he insisted upon my going down to see that justice was done. I think those are the words. I started; and on my way, having to pass Castner Hanway's house, I called upon him and requested him to accompany me. He being a little unwell, he had to get his horse. I stated to him what the messengers had stated to me.

JUDGE GRIER. State the words.

WITNESS. That Wm. Parker's house was surrounded by kidnappers; that they had broken in and were going to take him away, and requested me to accompany him, to see that justice was done, I think are the words as near as my memory serves me. I passed on a-foot, and he started to get his horse.

MR. STEVENS. You say being a little unwell?

ANSWER. Yes. I being on foot, went across the fields through a gateway. He took the road coming into the lane, the long lane opposite to the house. He came down from the south, and I advanced up from the north. He was there a little before me. I there saw Kline coming out of the lane.

JUDGE KANE. What lane? The short lane?

WITNESS. The short lane, from Parker s house. He called to Hanway, saying, I am the Marshal of the United States. Hanway advanced a few steps, and we met, and he mentioned to me, "This is the Marshal." I inquired if he had shown any authority, he said, No. He then turned, and advanced to Kline, and I asked him to show his authority. He then took out a paper, and handed it to me to read. I opened a paper, but had left my spectacles at home, and could not read it, except the signature. I saw the name of Edward D. Ingraham, and took it for granted by that, that he had authority.

We had some conversation; he wanted us to assist in arresting somebody, I don't know who, and as near as I can recollect the reply of Castner Hanway, he said he would have nothing to do with it, or something to that effect. By this time there were several negroes came up near the lane, where we were. They had guns and threatened to shoot. Castner Hanway was sitting on his horse, and he beckoned with his arm (hand), "don't shoot! don't shoot! for God's sake, don't shoot!" and advised Kline that it would be dangerous to attempt making arrests, and that they had better leave. Kline said he would hold us accountable for the slaves, what slaves, I don't know. Kline said he would leave, and he called to his men to come away. I think he called twice or three times, I am not certain as to the number. He made a motion as though he was moving off, and I cast my eye down the lane, and I saw other men down towards the house, moving as though they were coming. I started and went out at the end of the lane, where Castner Hanway came in, and passed down the field. Castner passed down the way I came in, down towards the long creek. As I passed along the lane, I saw Kline following.

QUESTION. You turned up towards the wood?

ANSWER. I turned up towards the woods. Castner Hanway went north.

MR. STEVENS. You cast your eye back?

WITNESS. Kline was following up the lane.

JUDGE KANE. You saw Castner Hanway going the other way?

ANSWER. Yes, sir—going the other way, and Kline following the way I was. Whether there was another person with him or not, I could not tell, but he crossed the road, and up into the woods, and I passed on along the road westward, and had got alongside of the corn-field, and there was a shouting, with the colored people I suppose, and presently I saw over the corn, a smoke raising near the house from the shots fired. At this time Kline was up in the woods, and presently after he called to me to come back, that there was a man shot. I passed on, and he followed along that same road. I went some two or three hundred yards, perhaps more—I went on and lost sight of him, and didn't see him afterwards. After the firing at the house—from my position I could see along the long lane over the creek—I could see or hear shooting and hallooing, and could see the smoke for some time.

MR. STEVENS. From the time that Castner Hanway rode into the mouth of the short lane, until he went away, did he ride across to the other side of the lane where the negroes were, to speak to them?

ANSWER. He did not.

QUESTION. While you were there, was Mr. Hanway speaking to the Marshal. Did he, or did he not say that he cared nothing about the Act of Congress or any other law?

ANSWER. He did not, that I heard him.

QUESTION. Did you say that?

ANSWER. I did not.

QUESTION. When the firing commenced, Kline was in the woods?

ANSWER. He was.

QUESTION. From the time that you left, and he followed you, did he get over into the corn-field?

ANSWER. He did not: if he did he did it very quick, indeed, and back into the road.

QUESTION. From the time he went into the woods until he followed you down towards your house—that is, on the road towards your house that you went—did he go back, down towards the mouth of the short lane?

ANSWER. He did not; if he did, he did it very quickly.

MR STEVENS. You can tell whether he went from the woods down to the mouth of the short lane?

ANSWER. He did not.

MR. STEVENS. You spoke of having stopped, after you had got a portion of the distance along the road that leads west of your house, and saw Kline coming in the woods—did you stand in the road behind the corn-field?

ANSWER. I got on the fence alongside of the road.

QUESTION. Before you saw Mr. Hanway, and told him there were kidnappers about to seize Parker, that morning, had he, as far as you know, any intimation, or had he formed any intention with regard to this transaction at the house?

MR. COOPER. I don't think that is a proper question.

MR. STEVENS. I have no objection to omit the question.

JUDGE GRIER. Hanway might have addressed him and said, "Come on," and he might have been ready before he got there, therefore, the question is not improper.

MR. STEVENS. I have no desire to ask it, if the gentlemen object.

QUESTION. In what condition was Mr. Hanway when he came out of the house, in regard to being prepared to go?

ANSWER. He had no coat on, and I think he had no hat on as I first saw him.

QUESTION. Any weapons?

ANSWER. No weapons of any kind.

QUESTION. Something has been said in the previous testimony about you and Mr. Hanway's being arrested, state whether you were arrested, or gave yourselves up?

ANSWER. We were not arrested, we gave ourselves up.

QUESTION. Where did you go to do that?

ANSWER. To Christiana.

Cross-examined by Mr. Cooper.

QUESTION. About what time in the morning did you state it was, before sun-up?

ANSWER. It was before sun-rise, I can't say exactly, as to the time.

QUESTION. Did'nt you know the warrants were out for you, before you went to give yourselves up?

ANSWER. I didn't know there was a warrant out, I was informed they were preparing a warrant.

QUESTION. Where were you then?

ANSWER. At my home.

QUESTION. Who told you?

ANSWER. George Whitson.

QUESTION. A white man?

ANSWER. Yes.

QUESTION. About what time was it in the morning, that you got to the ground—to Parker's house?

ANSWER. After sun-rise.

QUESTION. Was there any firing before you left the ground?

ANSWER. There was not.

QUESTION. Why did you leave?

ANSWER. Our object being accomplished—to ascertain that there was authority there, we had no further business.

QUESTION. Did you know any of the persons on the ground, besides Hanway?

ANSWER. I knew some two or three of the colored persons.

QUESTION. Did you see them with arms in their hands?

ANSWER. There was some that had arms in their hands—some had none.

QUESTION. Whereabouts did you state that you were at the time that you saw the smoke from the guns?

ANSWER. Alongside of one of the corn-fields, west.

QUESTION. How far was that from the house?

ANSWER. I suppose about five or six hundred yards.

QUESTION. In the direction of the creek?

ANSWER. It was.

QUESTION. You didn't go back the way you came?

ANSWER. No.

QUESTION. Did you and Hanway retire in different directions?

ANSWER. We did.

QUESTION. Where were you at the time you were informed that a man was shot?

ANSWER. I was on the road alongside of the corn-field, when Kline called to me.

QUESTION. How far, then, from the house?

ANSWER. I can't state precisely.

QUESTION. About how far?

ANSWER. Somewhere in the neighborhood of six hundred yards, I hadn't moved far.

QUESTION. That was after the firing?

ANSWER. Yes.

QUESTION. Why didn't you go back at the time and assist?

ANSWER. It is a hard question to answer—I felt repugnant to going there.

QUESTION. At the time the person was shot, were you alarmed for your own safety?

ANSWER. I was.

QUESTION. Were you alarmed at the time you left the ground?

ANSWER. Yes.

QUESTION. Greatly alarmed?

Answer. Quite alarmed.

MR. GEO. L. ASHMEAD. Do you know a colored man named Harvey Scott?

ANSWER. I only know him from seeing him since this transaction.

QUESTION. Did you ever see him before this transaction?

ANSWER. Not to my knowledge, I may have seen him.

QUESTION. Did you see him on the ground that day?

ANSWER. I did not.

QUESTION. Do you know a colored man named John Morgan?

ANSWER. I do.

QUESTION. Did you see him on the ground, there?

ANSWER. I did not.

MR. STEVENS. These are the very questions we wanted to ask their witness. I have no objection to them, but it is opening a number of issues, as your honor suggested.

MR. COOPER. I think this is competent as cross-examination, to test the witness' accuracy of recollection.

MR. GEO. L. ASHMEAD. He has said he saw a number of negroes whom he knew.

QUESTION. Did you see Henry Simmons there?

ANSWER. I did not. Some time after, I went home and got my breakfast, and returned to the ground about ten o'clock, and saw Henry Simmons there, then.

QUESTION. Who were the colored persons that you saw there, whom you knew.

ANSWER. There was one William Howard, who was there; another, who called himself James Dorsey.

QUESTION. Was there any other.

ANSWER. I saw Ezekiel Thompson. He came down the lane after Castner Hanway. He had nothing in his hands that I saw.

QUESTION. Did you see where Ezekiel Thompson went to?

ANSWER. I saw him at George Irwin's afterwards. I didn't see him after I saw him first, after Mr. Hanway on the ground.

QUESTION. Did you see any other colored persons there you knew?

ANSWER. I don't recollect the names of any.

QUESTION. You saw these persons you have named, there on the first occasion that morning?

ANSWER. I did.

QUESTION. How long before you, did Mr. Hanway reach the bars?

ANSWER. About a minute, perhaps—a very short time.

QUESTION. Did you hear any conversation that took place between Mr. Hanway and Mr. Kline before you came up?

ANSWER. I didn't—except the exclamation by Kline, I am the Marshal of the United States!

QUESTION. Did you hear any between him and Dr. Pierce at any time?

ANSWER. I did not.

QUESTION. Had you seen the Marshal, before you came up, hand any papers to Hanway?

ANSWER. I did not.

QUESTION. Do you mean to say he did not, or that you did not see him?

ANSWER. Mr. Hanway was in sight—it was on the lane, and if he had handed them, I could have seen them.

QUESTION. Did you see the papers in Hanway's hands at all?

ANSWER. When he handed the paper to me, I handed it over to Mr. Hanway

QUESTION. Did Hanway read the papers?

ANSWER. He looked at them.

QUESTION. You have stated that Kline was in the woods, and that you passed him?

MR. STEVENS. No, sir, he didn't say that.

QUESTION. Didn't you say that when you went down the long lane you passed Kline in the woods?

ANSWER. I did not.

QUESTION. You have said, then, that Kline called to you a man was shot—how far was he when he said that, from the mouth of the short lane?

ANSWER. I suppose a hundred or a hundred and fifty yards, as near as I can recollect, to the best of my judgment.

QUESTION. Could you see from that place to the mouth of the short lane?

ANSWER. I could not.

MR. JOHN W. ASHMEAD. Am I to understand that the statement you have now made, embraces every thing that you saw that morning upon the ground—that is to say, you have told us all you saw—the whole of it?

ANSWER. I may state that I saw men in the lane near the house.

QUESTION. You have told us all you saw?

ANSWER. I think so, as I recollect them.

MR. BRENT. Did you hear any thing the evening before, about kidnappers going to come up?

ANSWER. I did not, I had no intimation of such a thing, till Isaiah Clarkson told me.

QUESTION. When did you see Scarlett, before that morning?

ANSWER. I saw him just before I started, going towards the barn, he lived just across the road.

QUESTION. Before you started to Parker's, what was he doing?

ANSWER. Going towards the barn.

QUESTION. What was he going for?

ANSWER. I don't know.

QUESTION. Did you see him mount a horse?

ANSWER. I did not.

QUESTION. Did you see him on a horse?

ANSWER I met him on the lane, between the road that crosses the Valley at the mill.

QUESTION. Between Hanway's mill and Parker's house?

ANSWER. Yes.

QUESTION. Was he present when Isaiah Clarkson communicated this information to you?

ANSWER. He was not.

QUESTION. Did he receive that information from you or Clarkson, to your knowledge, that morning?

ANSWER. Not from me.

QUESTION. Which way did he go when he left you?

ANSWER. Towards Dogtown.

QUESTION. Had he been to Scarlett's house?

ANSWER. He came across from that side.

QUESTION. Was this before day?

ANSWER. It was between daylight and sunrise.

QUESTION. The statement made to you was that kidnappers had broken into Parker's house, and were going to carry him away?

ANSWER. That his house was surrounded by kidnappers—they had broken into the house and were going to take him off.

QUESTION. He wished you to see justice done?

ANSWER. He called upon me to go and see justice done.

QUESTION. Had you promised him or any one before that, you would see justice done?

ANSWER. I had not, that I know of.

QUESTION. Why did he call on you?

ANSWER. I don't know.

QUESTION. Had he particular reasons for calling on you to see justice done?

ANSWER. None that I know of.

QUESTION. You hadn't promised it before?

ANSWER. No.

QUESTION. You went to Hanway's house to give him the information—and you say Hanway got there before you?

ANSWER. A little.

QUESTION. Did you see him as he rode up towards Parker's house, through the long lane?

ANSWER. I saw him coming down the long lane.

QUESTION. Did you see him ride into the short lane?

ANSWER. I did not.

QUESTION. Did he go into the short lane?

ANSWER. He did not.

QUESTION. If he had gone into it, you would have seen him?

ANSWER. I would.

QUESTION. You didn't see him ride to the bars?

ANSWER. I did not.

QUESTION. If he had, you would have seen him?

ANSWER. I would.

QUESTION. And you didn't see the warrants handed to Hanway in the first instance, but they were handed by you to him, and if handed to him in the first instance, you would have seen it?

ANSWER. I would.

QUESTION. You say it was signed by Mr. Ingraham, from which you inferred there was authority; where was Clarkson then?

ANSWER. I don't know.

QUESTION. Did you see him on the ground?

ANSWER. I did not.

QUESTION. Did you tell the negroes that there was authority?

ANSWER. I did not speak to them.

QUESTION. Why didn't you give them that information which you had obtained from the papers? You went there to see justice done?

ANSWER. I went there to see if they had authority.

QUESTION. You were invited to go see justice done. I want to know why you did not inform these men you saw there about to proceed to violence, that there was authority?

ANSWER. I don't know that I can give any reason; I felt myself in danger and wished to get away.

QUESTION. Didn't you consider the white men in danger when you left there?

ANSWER. I thought they were leaving.

QUESTION Had you seen any leave except Kline?

ANSWER. The others made a motion as though they were coming.

QUESTION. Didn't you see the old man Mr. Gorsuch?

ANSWER. I did not.

QUESTION. Did you see him at any time that day?

ANSWER. When the inquest was held, I saw a man resembling Mr. Gorsuch; he was up near the house.

QUESTION. Were there not several persons between the bars and the house before you went away?

ANSWER. They were near the house.

QUESTION. Didn't you consider them in more peril than yourself when you left?

ANSWER. I don't know that I took a thought about it.

QUESTION. You didn't say a word to the blacks about there being authority for this proceeding; you saw there was authority; you were satisfied and alarmed and ran away. Were you at Christiana when the inquest was held?

ANSWER. I was not.

QUESTION. You came back at ten o'clock that day?

ANSWER. At the house where the corpse laid.

QUESTION. Where was the dead body then?

ANSWER. In the short lane.

QUESTION. Were you there, when the body was carried to Christiana?

ANSWER. I was not.

QUESTION. You went away before that?

ANSWER. I did.

QUESTION. Did you see Squire Pownell there that day?

ANSWER. I saw him at Parker's house that day. He summoned the jury of inquest.

QUESTION. Did you inform him, or any of the jury, that you had been an eye-witness of this transaction?

ANSWER. I didn't. I told them what I had seen at the distance.

QUESTION. You were not sworn by that jury?

ANSWER. No, sir.

QUESTION. You told them, the same that you told here to-day?

ANSWER. I can't recollect that I told them any thing in particular.

QUESTION. You didn't tell any thing contrary to what you told us?

ANSWER. No.

QUESTION. And you were not sworn?

ANSWER. No.

JUDGE GRIER. Was anybody sworn?

MR. BRENT. Nobody was examined but the doctor; to say if he was dead, and what had killed him.

QUESTION. Why did Hanway go up the lane to the north?

ANSWER. I dont know; his horse's head was turned that way

QUESTION. That was the contrary way from his home?

ANSWER. Yes.

QUESTION. Do you know where he went?

ANSWER. I do not.

QUESTION. Where did you next see him that day?

ANSWER. I think I met him, between George Irwin's house and his house; I am not clear in that though.

QUESTION. Did you hear the negroes shout; "He is but a deputy?"

ANSWER. I did not.

QUESTION. Did you see Kline leading Dickerson Gorsuch, or any wounded man?

ANSWER. I did not.

QUESTION. You saw nothing of that kind?

ANSWER. No.

QUESTION. You saw Kline in the woods before the firing began?

ANSWER. I saw him walk up into the woods before the firing began.

QUESTION. How far did he follow you?

ANSWER. He kept on the road. I did'nt go the same road he did. He kept on the road running by the mill?

QUESTION. He did'nt return after you saw him in the woods?

ANSWER. He did not.

QUESTION. He didn't lead any wounded man, after you saw him in the woods?

ANSWER. Not that I saw.

QUESTION. Could he have led a wounded man after he run up into the woods, without your seeing him?

ANSWER. I think he could not.

QUESTION. And you swear he was in the woods before the firing began?

ANSWER. I saw him go that way.

QUESTION. And that he could not have led the wounded man?

ANSWER. He hadn't time to do that and return to the position when I last saw him.

QUESTION. Where did you next see Scarlett?

ANSWER. I met him as I was going.

QUESTION. What condition was his horse in?

ANSWER. I didn't take much notice of the horse.

QUESTION. Did Scarlett tell you where he had been?

ANSWER. He did not.

QUESTION. Did you ask the question?

ANSWER. I did not.

QUESTION. Did you tell him any thing?

ANSWER. I don't know that I did.

QUESTION. You didn't tell him any thing about this fight, but just passed on the road?

ANSWER. Yes, I just passed on.

QUESTION. He lived opposite to you?

ANSWER. We were neighbors.

QUESTION. Didn't you know where Scarlett was going before you left home that morning?

ANSWER. I didn't, I had no knowledge of where he was going.

QUESTION, Clarkson had crossed the road, from his house to yours?

ANSWER. Yes.

QUESTION. Where you in bed when Clarkson came?

ANSWER. I was just opening the store door.

QUESTION. You kept a store, and were a post master of the United States?

ANSWER. Yes.

QUESTION. Did you sell any powder or shot the day before?

ANSWER. I have no recollection of selling any. I kept them.

QUESTION. When do think you last sold them?

ANSWER. I don't know.

QUESTION. Have you sold to colored persons?

ANSWER. I sell to any who ask me.

QUESTION. Then you have sold to colored persons?

ANSWER. Yes, to colored, and to white, too.

MR. COOPER. Which way did Hanway leave the ground—along the long lane, in the direction of the creek?

ANSWER. Yes.

QUESTION. Did you see him until he had reached the creek?

ANSWER. No.

QUESTION. How far was he towards the creek when you last saw him?

ANSWER. I can't say; my attention was not on him.

QUESTION. You saw no other white person in company with him, or about him?

ANSWER. No.

MR. BRENT. When Hanway said to Kline he would have nothing to do with it, was not that in reply to Kline's request to assist him?

ANSWER. It was.

QUESTION. When he requested him to assist him, his reply was, he would have nothing to do with it?

ANSWER. Yes.

QUESTION. You didn't hear him say any thing else?

ANSWER. Not that I recollect.

Re-examined by Mr. Lewis.

(Witness is shown the plan, and questioned upon it.)

JUDGE KANE. Mr. Lewis, we cannot hear what you said.

MR. LEWIS. I wanted to know in what direction he crossed into the woods. He said he crossed directly there. (pointing) When his attention was next turned toward him, he said he was along here; (pointing) and he saw him in the woods in the direction of the road and he came into it.

Cross-examined by Mr. Brent.

QUESTION. You went back there at ten o'clock and saw a dead body. You had seen the firing?

ANSWER. I saw the smoke.

QUESTION. Did you not believe the man was killed by the party you had seen there early in the morning?

ANSWER. I supposed so

QUESTION. You knew some of the parties there, did you ever give information to any person to have these parties arrested and held to an examination for the death of that man?

ANSWER. No.

QUESTION. Squire Pownall was known by you to be a justice of the peace?

ANSWER. Yes.

QUESTION. You saw him on the ground in the presence of the dead body?

ANSWER. Yes.

QUESTION. Did you name to him which of the colored men you had seen there in the morning, and whom you could identify, and demand that they should be arrested?

ANSWER. I did not.

QUESTION. State why you did not, when you had been an eye-witness to the principal part of the transaction?

ANSWER. I dont know that I can give any reasons.

Henry Birt being conscientiously scrupulous of taking an oath is affirmed.

Examined by Mr. Stevens.

QUESTION. Where did you live at the time this murder took place at Parker's?

ANSWER. I lived with Castner Hanway.

QUESTION. Will you state how Castner Hanway came to go down to that house, and what you know about it?

ANSWER. On the morning of the affray, Elijah Lewis came along the road where I was just crossing the road at the time, and he asked me if Castner was in, and I told him he was, and I asked if he wanted to see him, and he said "tell him that William Parker's house was surrounded by kidnappers, who were going to take him," or words to that effect. I turned to go into the house, and Castner came out, and I told him what Elijah had told me. Elijah was going on down the road at that time, and Castner asked him what was the matter, and he told him the same thing. He spoke of having the horse, and I asked him if he wished to have him, and he said yes, and I got him and saddled him, and in the meanwhile he sat down and ate his breakfast, and then gets on the horse and started down the road towards Parker's, and I saw nothing more of him from that time till sometime in the forenoon.

QUESTION. Did you see a man they called Kline that morning come past your mill?

ANSWER. Yes, sir.

QUESTION. He has said he had no conversation at the mill; state whether he had.

ANSWER. Yes, he had with Squire Pownell, Thompson Loughead and I. He came along by the mill, and stopped when he was opposite the mill. First, I believe he inquired the way to Penningtonville, and Thompson Loughead directed him on the way. He came over there; he was a little hard of hearing; he came over to the mill to hear what we had to say, and we told him the way, and he said there were two men laying over there at the house, badly wounded, and particularly a young man laying up in the woods, that he thought would die; and he wanted to get a conveyance to take them to the railroad. Thompson asked the reason why they stayed so long until these men were wounded. Kline remarked, that he wanted to withdraw, but they would not mind him. That he told them it was impossible to do any thing with the darkies they were after, there were too many against them; that he wanted them to come away, but they would not mind him, and he came away and left them.

Cross-examined by Mr. Cooper.

QUESTION. What time in the morning was it when he came to the mill?

ANSWER. I suppose it may have been perhaps eight o'clock.

QUESTION. What sized man is Mr. Loughead?

ANSWER. He is not very tall, but stoutly built; he is not quite as tall as I am, I think; he is a middle aged man.

QUESTION. How far was it from the mill when Kline met Squire Pownell?

ANSWER. Squire Pownell came up to the mill while we were talking to him.

QUESTION. How far was it from the mill?

ANSWER. He had not moved from the time he came up close to the mill.

Jacob Whitson, being conscientiously scrupulous of swearing, is affirmed.

Examined by Mr. Stevens.

QUESTION. Shortly after this affair at Parker's, had you any conversation with Kline, about whether he knew who shot old Mr. Gorsuch, and what did he tell you?

ANSWER. On the first day of the week following the riot, Kline and some seven or eight others came to my father's house, and asked if Parker was there; I told him he was not, and he said that he had been informed that he was seen coming there, and I told him that the persons who had informed him knew more about it than I did, but if he had legal authority, he could search. He said they were in pursuit of him, and there was ten thousand dollars reward offered for him; five thousand by Governor Johnston, and five thousand by the Governor of Maryland; and they were bound to have him, for he was the man that shot Mr. Gorsuch.

JUDGE GRIER. Is this in contradiction of any thing sworn by Kline?

MR. STEVENS. Yes, sir; I asked Kline if he didn't tell Mr. Whitson that Parker shot Mr. Gorsuch; and I asked him the question in another shape,—if he didn't tell him he saw him shoot Mr. Gorsuch, and he denied it, and said he had no conversation with anybody at the house in reference to Parker.

MR. GEO. L. ASHMEAD. I have no recollection of such a question.

MR. BRENT. He said he didn't know Jacob Whitson.

MR. STEVENS. And I asked him further, if he didn't go to a certain house on Sunday in search of Parker—he said he did go there, but had no conversation with anybody about it.

MR. GEO. L. ASHMEAD. I don't recollect such a question being put to Kline.

MR. STEVENS. Here it is on page 119, "Have you told any person," &c., (reads from notes.)

MR. GEO. L. ASHMEAD. Not a word was said about the reward.

MR. STEVENS. We don't ask about the reward.

JUDGE GRIER. It is part of the transaction—if he states a conversation, he must state the whole of it.

WITNESS. He said that he was the man that shot Mr. Gorsuch. He said perhaps they would not get him to-day, may-be not for several days, but if he went to Canada he would get him from there—he would bring him out of Canada. And my sister said, would you know Parker, and he said he would—that he was talking to him from the window twenty minutes before the firing commenced.

QUESTION. Did he say how he knew that Parker shot him?

ANSWER. He just said he saw him shoot him.

No Cross-examination.

The Court adjourned till Wednesday, Dec. 3d, 1851, at 10, A. M.

Wednesday, December 3, 1851.

COURT OPENED AT 10 O'CLOCK, A. M.

PRESENT, JUDGES GRIER AND KANE.

MR. R. M. LEE. Having been placed by the remarks of counsel yesterday, in a false position, I beg leave to define my position in this honorable Court. If I had the desire for recrimination, I owe it to the official position I hold in the City of Philadelphia, to which reference was made by the learned gentleman, whether with, or without reason, to ask this Court to permit me to let the public and your honors understand the position I occupy here. I was the original counsel of the late Edward Gorsuch, Esq., on his arrival in the City of Philadelphia. If he had arrested his fugitives, I should have appeared before your honors, or the Commissioner, as counsel. I had his papers in my hands. The neighbors and friends of Mr. Gorsuch in Maryland, united in repeated requests, to solicit the aid of one so humble as I must ever be in this or any other cause. I hesitated. The Rev. Mr. Gorsuch, on my coming into Court, the son of the murdered citizen of Maryland, pressed me, having been the counsel of his father, to unite my humble efforts in the cause. I yielded to the solicitations of those gentlemen, and was retained by the neighbors and friends of Mr. Gorsuch, in Baltimore. I waited upon the District Attorney and had a full understanding with him, and came into this cause not only with his approbation and consent, but after he had expressed his gratification of the fact. The duties of counsel having been disposed of in the cause, I was quite satisfied to occupy any position here, that might be marked out for me; therefore, it was my duty mainly to attend to the examination of the jury throughout the State who had been summoned here. This will satisfy this Court and the public of the position I occupy, and that must suffice between the learned gentleman and myself, before this Court.

MR. CUYLER. May it please the Court, I beg leave to state, that it was farthest from my desire, to do any injustice to Col. Lee, or to the other gentlemen representing the State of Maryland, for whom I need not say, I have all due personal respect. I spoke in a great measure extemporaneously, and having since been informed that the gentleman does not occupy the position of a volunteer, I very willingly withdraw the remarks.

Thos. Lawhead is called and sworn.

MR. STEVENS. Inform the Court and Jury whether, on the morning this affair took place at Parker's, and where you met Elijah Lewis, and what you heard Kline say after that.

ANSWER. I had to go over that way that morning and heard the row. I started from the brick mill across through a clover field and out of the road, round the field, and I took a near cut to save going round the road.

QUESTION. You mean the road by the woods?

ANSWER. I was within fifteen or twenty yards of the road, when I was in the clover field. I heard the report of a great many guns, which went off in rapid succession one after another. I passed into the road and went some two hundred and fifty yards, there I met Elijah Lewis. He says, "you had better turn back." I stepped up three hundred steps, and I see one man on the side of the road and the other out in the middle of the road. One come and catched the other, and laid him down along side of the edge of the woods. He appeared to leave the man directly. He stops, halloos and says, halloo! stop!

MR. STEVENS. Who was that?

ANSWER. I do not know who it was. He followed along down the road. Just at that time, I saw heads of men down near the creek, I turned round and come on with Lewis, at the place where I crossed in the clover field. I takes across the clover field. Lewis, he passes along around; just at that place Joseph Scarlet came riding on horseback. I passes on to the mill and sits down with Henry Burk, and in the course of two or three minutes, the marshal came up, he asked the road to Penningtonville, I directed him to the road. He says, "there is two men wounded, one up to the edge of the woods and the other down in the lane, and he didn't think the one by the woods would ever get over it. He asked something about a doctor. We told him there was a doctor at Christiana and one at Penningtonville.

Says I, you had better left before so many darkies gathered. Says he, I told them so. Says he, I called them away and I left myself, and they wouldn't follow me. He complained of being tired. Says he, I came up from Philadelphia by the night line, and walked across, and pointed at his legs, they were all drabbled with wet and dew. At that, Squire Pownell rode up, and Henry Burk says, that is the squire, may be he can do something for you. He told him there was a couple of men wounded.

MR. COOPER. You need not tell that, sir.

WITNESS. That is pretty much what I know. He left directly after that.

MR. COOPER. What time in the morning was it you first got near Parker's house?

ANSWER. I think it was near half after six.

QUESTION. How high was the sun?

ANSWER. The sun was near an hour high.

MR. BRENT. You said that he said, one was wounded in the lane and the other in the woods. Did he say both were in the woods?

ANSWER. No, sir.

QUESTION. It was the conversation Henry Birt heard?

ANSWER. Yes, sir.

QUESTION. Esquire Pownell came up to the mill, Kline said he was much fatigued, and that he had come up in the night line from Philadelphia?

ANSWER. Yes, sir.

QUESTION. Did he say he had come up in the night from Philadelphia, or the line which came from Philadelphia?

ANSWER. No. He said he came from Philadelphia in the night.

QUESTION. He could not have said the other. You could not have been mistaken about it?

ANSWER. No, sir.

QUESTION. He had came from Philadelphia in the night line, that is what you said?

ANSWER. That is what I understood him. He came up in the night line.

QUESTION. He came up from Philadelphia in the night line, and walked over to Penningtonville?

ANSWER. Yes, sir.

QUESTION. When you first saw him he was with another?

ANSWER. They appeared to be about six feet apart. One came and catched the other by the arm and held him up.

QUESTION. Was it the Marshal?

ANSWER. I took him to be of the same appearance as he that came to the mill.

QUESTION. Where was that?

ANSWER. It was just at the edge of the woods.

QUESTION. Where did he lead him to?

ANSWER. Up near the road to the edge of the woods, up near a tree, and he laid him down.

QUESTION. Did you see any other white men?

ANSWER. I didn't see any other.

QUESTION. Lewis was in sight then, was he? How far off was he from that place where this wounded man was laid down?

ANSWER. Some three hundred steps.

QUESTION. Did he walk fast?

ANSWER. Not fast. A slow walk. The road makes a curve, and I came up round the circle and met him.

QUESTION. Could you see up towards the creek?

ANSWER. No, I could'nt see that way. There was a corn field and clover field between me.

QUESTION. You didn't see a man on horseback?

ANSWER. None but Scarlet.

QUESTION. You say you could not see up towards the creek, so, if a man had been up there on horseback I could not have seen him?

ANSWER. No, sir, I could not have seen him.

Samuel H. Loughlin, is called and affirmed.

MR. STEVENS. Be so good as to inform the Court and Jury, whether you had any conversation with Kline after the affair at Parker's house, and what it was?

ANSWER. I went up to Christiana on Friday, next day after the riot, I saw Mr. Kline, I got into conversation with him with regard to the affair He told me the story over as I supposed then was correct. He said that he went up to the ground, I took it. I cannot give his exact words in every respect. I took it he was there before daylight, because he said that as soon as it was light, he saw a negro come into the lane and he was recognized as one of Gorsuch's slaves, and he ran after him, and he said the negro went into the house, and he said then that they went in and called to the negroes, and they recognized their voices, two of them as being the property of Mr. Gorsuch. He said that they became willing to go with them, and wanted to wait a little while. He said he gave them fifteen minutes then, and about that time he said they threw something out of the window upon them.

MR STEVENS. We want you to come to the time of the war, and where he was, and what you heard Kline say?

JUDGE GRIER. Tell the whole story?

WITNESS. He said that the blacks by that time had gathered in the lane, and he said they appeared to have weapons, and he said that he seen that there was going to be a fight, and that it would be hard to get these men out of the house. He called his men away and they would not come. He said if they had went, they would not have got hurt. He said he went into the woods and heard a gun go off, and he said after the firing he said a man came running down by where he was, as crazy as a bedbug. I being on the ground the morning after the affray, I asked him particular questions with regard to certain points, and he said he went after the negroes, and went up to the door. He used the phrase, he broke it in or burst it, which, I cannot say. However he got open the door, and he was the first man that went into the house. He said that Mr. Gorsuch went in with him.

MR. STEVENS. Did he tell you where he was at the time the firing commenced?

ANSWER. He told me he went into the woods. There was no particular question in regard to the position he was in. I gathered the idea—

MR. BRENT. Give the words. Not what you gathered.

ANSWER. He said he went into the woods.

MR. BRENT. I understood you to say, that after the fight, Kline went into the woods.

ANSWER. No, sir. I said he went into the woods, after calling his men away.

QUESTION. Didn't you say before, he went into the woods, after the fight?

ANSWER. No, sir. I say he went into the woods when he saw the negroes gathered in the lane. He called his men away, and they would not come. After the firing, he said there was a man came running down, and he was crazy as a bed-bug.

QUESTION. Did he say anything about carrying the wounded man up into the woods?

ANSWER. No, sir.

QUESTION. So far as you understood him, he told you the only man he met, was the man that was crazy, and he didn't mention any other at all?

ANSWER. No, sir.

QUESTION. You state the negroes had asked for time, and they were beginning to gather together. What did he say about Hanway at that time?

ANSWER. He said that Mr. Hanway was there on horseback, and he told the negroes to shoot.

QUESTION. Did he say he rode among them?

ANSWER. No, sir. He said he was on horseback, and told the negroes to shoot.

QUESTION. What did he say about reading the warrant?

ANSWER. He said that Mr. Lewis read the warrant. He showed them the warrant.

QUESTION. Did he say anything about calling them to assist?

ANSWER. He did.

QUESTION. What did they do?

ANSWER. They refused.

QUESTION. Did he tell what they said.

ANSWER. No, sir. I dont remember.

QUESTION. You say you questioned him

ANSWER. I did.

QUESTION. What about?

ANSWER. How he got into trouble at the time.

QUESTION. Anything else?

ANSWER. Nothing particular.

QUESTION. Did you feel any interest in the matter that induced you to question.

ANSWER. None at all.

QUESTION. Where do you reside, at Penningtonville?

ANSWER. About two miles off.

QUESTION. Were you at Christiana when the coroner's inquest was held?

ANSWER. Yes, sir.

QUESTION. Did you see Elijah Lewis on the ground at the time of the coroner's inquest?

ANSWER. I saw him on the ground?

QUESTION. Did you hear him say anything?

ANSWER. No, not that I know of, I didn't shake hands with him, though I knew hlm well. I did not shake hands with him.

QUESTION. Who gave you the first information?

ANSWER. Mr. Krider

QUESTION. You are positive that Kline said he had called on both Hanway and Lewis for assistance?

ANSWER. He said he had called upon them for assistance.

QUESTION. Did he say they refused?

ANSWER. He said they refused.

QUESTION. And Mr. Hanway ordered them to fire?

ANSWER. He told the negroes to shoot

QUESTION. You say he didn't describe his riding his horse among them?

ANSWER. He did not, he said he was on horseback.

QUESTION. He complained of Lewis and Hanfor having excited the negroes?

ANSWER. He didn't in any other way than that Hanway told them to shoot.

QUESTION. Did he say that Lewis did anything?

ANSWER. Nothing but that he took the paper in his hand and read the warrants, and refused to take hold.

Isaac Rogers sworn.

MR. STEVENS. Isaac is your first name?

ANSWER. Yes, sir.

QUESTION. Will you go on and tell us what you know of this affair at Parker's house, so far as you know anything about it, and so far especially as Mr. Hanway is concerned. In the first place, how far do you live from the spot?

ANSWER. I cannot tell exactly, it may be eight or nine hundred yards.

QUESTION. Up the long lane?

ANSWER. Yes, sir; it might be more or less, I cannot say about that.

QUESTION. From Parker's house. This is a map; (showing the witness a map) here is Parker's house, and here is the long lane; is that north?

ANSWER. Yes, sir, that is north of Parker's, about half way up the hill.

QUESTION. Go on and tell what you saw and know.

ANSWER. On Thursday morning I heard the noise there was at Parker's house, sometime after sunrise, somewhere about sunrise, it may be a little after; I heard a great noise on Thursday morning. I ran down as far as the creek; I went across and stood there a few minutes, and heard a great firing of guns, and I turned and went towards my own home again as hard as I could go. After I had run off from the creek, I saw Castner Hanway riding on his horse, and Dr. Pierce running along side, and a colored man with a gun some few yards behind. They got opposite, I was in the field, and they were in the lane, and I hallooed to the colored man not to shoot; he didn't mind me, he stopped; I didn't see any thing of Dr. Pierce, but when I got there he was in my house, and Mr. Hanway rode away.

QUESTION. What did Mr. Hanway do?

ANSWER. He turned on his critter and he says several times, "dont shoot, boys."

QUESTION. You said the same thing.

ANSWER. Yes, sir.

QUESTION. When you saw Hanway and Dr. Pierce they were between the creek (if I understand you) and your house?

ANSWER. Yes, sir, where I first discovered them.

MR. COOPER. In what position was Dr. Pierce at the time this black man was about to shoot him. Which side of Hanway was he?

ANSWER. I cannot say precisely which side; he was close by him.

QUESTION. Was he further in front of the horse or behind?

ANSWER. I cannot say particularly whether he was in front or behind; he was moving about.

QUESTION. Close by?

ANSWER. Yes, close by.

QUESTION. Did Dr. Pierce go to your house?

ANSWER. I didn't see. I saw him go up the lane, but he didn't go to the house.

QUESTION. Did not Joshua Gorsuch, a wounded man pass your house and make a stop outside the door?

ANSWER. That I cannot say, I was not at the house.

QUESTION. Afterwards when you were at the house?

ANSWER. Yes, sir.

QUESTION. Did you see a man go up the lane?
ANSWER. Yes, sir.
QUESTION. A wounded man?
ANSWER. Yes, sir.
QUESTION. Were you close to him?
ANSWER. I was in the field, and he was in the lane.
QUESTION. Did you see anybody strike Joshua Gorsuch with a club, a gun, or anything?
ANSWER. No, sir.
QUESTION. Did you not say before Roger Ryer at Lancaster, that you saw him struck?
ANSWER. I did not.
MR. BRENT. Do you state so now?
ANSWER. Yes, sir.
QUESTION. You say you only saw one following Dr. Pierce?
ANSWER. Only one I took notice of; and the reason why was because he had a gun.
QUESTION. Do you mean to say there were no more in the lane?
ANSWER. There were more passing and repassing.
QUESTION. Were they before or behind the horse?
ANSWER. Some were down the lane, and some coming towards him.
QUESTION. You say you heard him say, "boys, don't shoot?"
ANSWER. Yes, sir.
QUESTION. Were they shooting in his direction at the time?
ANSWER. They were not shooting at that time, but a man was following him with a gun in his hand.
QUESTION. Would it have endangered Hanway, if they had fired at Pierce in the position in which Pierce was placed?
ANSWER. I think it is quite likely it would.
QUESTION. You think he would be in danger?
ANSWET. Yes, sir.
QUESTION. Did you hear a colored man ask the other why he did not shoot Dr. Pierce, and how it was?
ANSWER. I don't remember.
QUESTION Don't you remember his saying he had no more powder and shot?
ANSWER. If he did, I have forgotten.
QUESTION. Have you forgotten that?
ANSWER. Yes, sir.
QUESTION. I will ask you if you did not state this in the presence of Alderman Reigart, that one colored man said to the other black man, the reason why he did not shoot Dr. Pierce was, because he had no more powder and shot; and do you recollect stating that, or don't you remember it now?
ANSWER. I cannot remember; it might be I did.
QUESTION. Have you a good or a bad memory?
ANSWER. My memory has not been very good; at that time it was very much confused.
QUESTION. Did you call the man by his name?
ANSWER. I remember calling his name. I think I knew his name. I think it was a man I knew by the name of Dave Johnson.
QUESTION. How many negroes do you suppose you saw on that occasion?
ANSWER. There might be somewhere between seventy-five and one hundred. There might be more, and there might be less, I cannot say.
QUESTION. You saw another man, you say, coming along; where did you see him, and how did he come; as if he were injured, or did he walk firmly?
ANSWER. He walked along, he twisted a little, and he staggered.
QUESTION. Did he walk?
ANSWER. He did not walk like as if he was very sound.
QUESTION. He twisted and staggered?
ANSWER. He twisted.
QUESTION. He came up the lane?
ANSWER. He came up the lane. It was after I saw Hanway and Pierce.
QUESTION. Did you know it was Joshua Gorsuch?
ANSWER. No, sir, I did not know who he was until I inquired.
QUESTION. Did you see him fall down, coming up the lane?
ANSWER. I saw him fall on his knees once, but there was no person near him then.
QUESTION. Were negroes passing at the time?
ANSWER. They were passing; whether they went just past him, I do not know.
QUESTION. Did you tell any one not to touch him, sir?
ANSWER. Not that I remember, sir.
QUESTION. Did you notice whether his head was bleeding?
ANSWER. No, sir.
MR. COOPER. That is all I desire to ask John C. Dickinson affirmed.
Examined by Mr. Stevens.
QUESTION. State whether you had any conversation with Dr. Pierce, relative to this affair at Parker's house; relative to Hanway and Kline, and what it was?
ANSWER. On the day after the murder of Mr Gorsuch, I, in company with Dr. Pierce, took the cars at Christiana, and went to Lancaster Our principal conversation was in relation to this matter; we sat on the same seat, side by side. I had an introduction to him before we got into the car. He said to me, it was the rashest piece of business he ever knew, that the old gentleman caused his own death, and his son's wounds. He also blamed Kline, he said, very much. After the attack had commenced, they were stationed round the house; Kline, he said, left. He went out, and he called, he said, for the marshal two or three times, but there was no marshal answered. He said he went back, and had persuaded the old gentlemen to leave, and they had left; in coming out the short lane he perceived a change in the countenance of the old man, he looked calm and stern.
MR. COOPER. This is not what Dr. Pierce was asked about. He was interrogated as to one or two things, and the object of this witness is to contradict him, and it would be evidence for no other purpose; now he is testifying to things that were not detailed in evidence, and which Dr. Pearce did not assert on the stand, at all. And I think therefore, it is but right that the exami-

nation should be confined to those points legitimately at issue. There was not a word in reference to this matter, spoken by Dr. Pierce.

Mr. Stevens. I asked Dr. Pierce about the conversation which he had with Mr. Dickinson relative to Kline, and relative to Hanway's saving his life; add I asked him particularly about the conversation in the cars going to Lancaster, and he didn't recollect any of it. We had better turn to the testimony.

Mr. Brent. This is the testimony on page 131. Did you ever tell Squire Dickinson, &c. (Reads.)

He didn't know the party, and had no recollection of going with him in the cars. He denied nothing of this conversation; he didn't recollect.

Mr. Stevens. Here it is. Did you never tell Squire Dickinson you believed you owed your life to Hanway? I have shown he was introduced to Squire Dickinson, and sat side by side with him, in the cars from Christiana to Lancaster.

Judge Grier. If it contradicts the witness, then it will be testimony. If it confirms him, it can do you no harm, and them no good.

Mr. Cooper. He was going on to give a different version from this, when I stopped him.

Judge Grier. I recollect the witness admitted that he had said something about, if it had not been for Hanway, he would have been killed; whether this will tend to confirm or contradict the witness we cant tell till we hear it. If it tends to contradict him, they have a right to the testimony; and if it does not, it does them no good and you no harm.

Witness. In coming out of the short lane, when he had persuaded the old gentleman to leave, he found his countenance had changed; he looked calm and stern, and he wheeled round and said, he would have his slaves, or he would die in the attempt. The old gentleman stepped three or four paces—advanced towards the negroes, and received a wound and fell; and Dickinson Gorsuch also received a wound, and he and the Doctor both at the same time fired two or three balls of the revolver, and reserved the balance to save his life. In running he caught up to Hanway, the negroes in full pursuit. He said he believed he owed his life to Hanway; that when he got up to him, he got along side of the horse, and kept in that position, and Hanway turned round and put up his hand and said, "for God's sake not to shoot."

Question. What did he say about Kline?

Answer. He blamed Kline. He said he left when the attack had commenced; and he went out and called for the marshal, and there was no marshal answered; he neither saw nor heard of him after the attack, and he left; when the negroes were coming to the house Kline left. He censured him. I heard Dr. Pierce say that he blamed him; he was conversing with Mr. Cockney. He said he blamed Kline much for the transaction; that was after he came back.

Cross-examined by Mr. Brent.

Question. This was about the next day after the occurrence?

Answer. Yes.

Question. He blamed the old man for his own death, and his son's wounds?

Answer. Yes.

Question. That the old man and all were retiring, didn't he say that they were compelled to retire by the superior force on the ground?

Answer. I think not; he said he persuaded the old gentleman to leave.

Question. Did he assign any reason why he persuaded him to leave?

Answer. I cant say.

Question. Was it not that he found the negroes too strong?

Answer. Not to my knowledge; he did not state it.

Question. He stated that they retired?

Answer. Yes.

Question. Did he state that he heard Kline order the retreat?

Answer. Not to my knowledge.

Question. May he not have stated that, without your recollecting it?

Answer. He may, but I cant recollect it.

Question. He said they were retreating, and when they got down some distance a change came over the old man's face, and he said he would have his slaves, or would die in the attempt, and he returned, and in consequence of that he was killed and his son wounded?

Answer. Yes.

Question. Did he make a statement to you about Hanway's having been at the bars beforehand?

Answer. No, sir.

Question. Did he detail the whole transaction fully?

Answer. He showed me his wounds.

Question. He didn't particularly detail the whole transaction, but in speaking about it he said it was the old man's imprudence that had cost him his own life and his son's wounds.

Answer. Yes.

Question. And he went on to blame Kline, when he came down and called and looked for him, he was not to be seen?

Answer. Yes.

Question. As to Hanway's saving his life, did he state that he sheltered himself behind Hanway's horse?

Answer. He said he kept alongside of Hanway, and Hanway was on horseback.

Question. Did he say what his object was?

Answer. I don't think he did.

Question. Did he say it was to shelter himself by Hanway's person?

Answer. I don't think he did. He said he kept alongside, and that he believed Hanway had saved his life.

Question. And he didn't state his object in keeping alongside?

Answer. I don't know that he did.

Question. He considered that Mr. Hanway had saved his life, by turning round and saying to the negroes, for God's sake, don't shoot?

Answer. Yes.

Question. And in that way he had saved his life?

Answer. He said that he turned round and

put his hand up and said, for God's sake don't shoot.

QUESTION. Did he say the negroes seemed to mind Mr. Hanway?

ANSWER. I don't know that he did.

QUESTION. Was not that the idea expressed by him, and the impression on your mind?

ANSWER. The impression made upon me, was, that Hanway had saved his life.

QUESTION. And the mode in which he had done it, was by turning round, and telling the negroes for God's sake not to shoot?

ANSWER. Yes.

QUESTION. Did he say that the negroes turned back, or a portion of them, after Mr. Hanway had said that?

ANSWER. He said he believed he owed his life to Mr. Hanway.

QUESTION. Did he say that the negroes turned back, or a portion of them did, after Hanway had said that.

ANSWER. That I don't know, I don't recollect.

Dr. Ashmore J. Patterson, sworn.

Examined by Mr. Stevens.

QUESTION. Tell the Court and Jury any thing you heard Dr. Pierce say with regard to the conduct of Mr. Hanway, in that affair at Parker's?

ANSWER. On the evening of the same day of the riot, I met Dr. Pierce at the house of Levi Pownell, giving attendance to Dickinson Gorsuch, his cousin, and he and I had some conversation on the porch in front of the house. He commenced giving an account of the events of the morning. After having detailed some of them, he spoke, in his retreat from the ground, he fell in with Hanway, and his exact language he made use of, I don't remember, but the purport was, that he believed he owed his life to Mr. Hanway, in giving defence against the infuriated blacks who were pursuing him.

MR. BRENT. The purport is not evidence, give what he said.

WITNESS. I could not give his exact language?

MR. BRENT. Give the substance of it.

JUDGE GRIER. You are not to give inferences, but if you cannot recollect the words, give us as near as you can the substance.

WITNESS. It is not a mere inference from what he said. His language to me was conclusive in what he meant, but his words I dont remember. He spoke to me of Hanway's defending him against the blacks, he did not detail the manner of that defence; but he said he believed he owed his life to Hanway, those were his words in that matter as near as I can remember.

QUESTION. Any thing said about Kline?

ANSWER. Yes, he commenced talking about Kline first, he spoke to me of Kline, before the attack was made, having been boasting all the time of his former feats of valor and induced them to believe he was a man of great courage, but when they got on the greund, as soon as there was evidence of danger, that his courage seemed to forsake him and he left the ground.

Cross-examined by Mr. Brent.

QUESTION. He said there was an appearance of danger before his courage forsook him, that the danger preceded it?

ANSWER. Some evidence of it.

QUESTION. Did you make a *post mortem* examination of the body of Mr. Gorsuch?

MR. STEVENS. I have not asked the witness a word about that.

JUDGE GRIER. I suppose it is immaterial to the general question before us. You cannot bring new evidence-in-chief on a cross-examination of their witness.

James G. Henderson affirmed.

Examined by Mr. Stevens.

QUESTION. Had you any conversation with Dr. Pierce after this affair at Parker's; and what was it?

ANSWER. I hadn't any conversation with Dr. Pierce. I heard him relate to others what took place on the morning of the 11th of September, or part of it. I left the room before he concluded.

QUESTION. What did he say?

ANSWER. I cant give precisely the language. He appeared to be excited and spoke fast.

JUDGE GRIER. As near as you can give it; giving substantially the meaning.

WITNESS. He said he acted cowardly—the Marshal—and left the ground improperly, which he believed encouraged the negroes to fire.

No cross-examination.

William D. Kelley, sworn.

Examined by Mr. Stevens.

QUESTION. Are you acquainted with Henry H. Kline of this city?

ANSWER. I am, sir.

QUESTION. What is his general character for truth?

MR. G. L. ASHMEAD. The first question in such cases is, does the witness know the general character of the party for truth and veracity?

JUDGE KANE. It is pretty well comprehended when you have an intelligent witness.

MR. STEVENS. I suppose Judge Kelley understands me.

QUESTION. Do you know his general character?

ANSWER. I believe I do.

QUESTION. Do you know his general character for truth and veracity?

ANSWER. I have heard it much spoken of.

QUESTION. What is it?

ANSWER. Very bad.

QUESTION. Would you from that general character believe him on oath?

ANSWER. That would depend entirely upon circumstances.

QUESTION. Would you place confidence in what he would say upon oath?

MR. COOPER. That is not the proper question.

JUDGE GRIER. The witness has fairly answered the question in the way I think it would be answered by every man.

Francis Jobson, affirmed.

Examined by Mr. Stevens.

QUESTION. Do you know Henry H. Kline?

ANSWER. I do.

QUESTION. How long have you known him?

ANSWER. About twelve years.

MR. COOPER. May it please your Honors, would it be proper that this witness should be present. He desires to be present to see the persons and to instruct counsel as to their mo-

tives, and I see no impropriety in his being present—he don't know who their witnesses are?

JUDGE GRIER. You have a right to have him here.

MR. CUYLER. There is not the slightest objection on our part.

Witness continued.

QUESTION. Do you know his general character?

ANSWER. Yes.

QUESTION. Do you know his general character for truth and veracity?

ANSWER. I do. I have been a good deal with him, and seen him frequently, every week and every day perhaps for ten years.

QUESTION. What is that character?

ANSWER. I should say notoriously bad.

Cross-examined by Mr. Cooper.

QUESTION. Do you speak of his general character, or his character for veracity?

ANSWER. His general character.

QUESTION. And not his character for veracity in particular?

ANSWER. That, in connection with the other.

QUESTION. Who have you heard speak of his character for truth and veracity?

ANSWER. I have heard Jacob Walker of our district. I can't recollect when. It is within a year.

QUESTION. Was it within a month?

ANSWER. I can't say.

QUESTION. Who else did you hear?

ANSWER. With regard to two particulty persons I heard speak most about him—they are deceased—they are Mr. Roberts, who was a constable of Upper Delaware ward, and Mr. Dohnert.

QUESTION. Did they say anything in regard to his character for truth, or in general?

ANSWER. Not particularly.

QUESTION. Then it was not in reference to his character for truth they spoke?

ANSWER. It was in reference to his general bad character. I never even asked the question of his taking an oath. I didn't suppose he would do such a thing. I thought he had conscience enough left not to do such a thing.

QUESTION. That you say on your oath?

ANSWER. Yes.

QUESTION. Had you and Kline any difference?

ANSWER. I don't think Mr. Kline knows me. I have shunned him always, but his character is so notorious, that I could not help hearing it. I have heard George Dyer speak of his general bad character.

MR. JOHN W. ASHMEAD. I am anxious this should be confined to a proper point, and yet I wish to give the defence as large a license as is compatible with the rules of evidence. The proper question, is first: do you know his general character for truth and veracity? He says he does, and yet all the matters given now, are not at all connected with his truth and veracity?

JUDGE GRIER. If the questions are put right the witness has nothing to do but to answer.

MR. COOPER. The usual questions are:—Do you know the witness? What is his character in the neighborhood in which he lives for truth and veracity? Have you ever heard him spoken of?

JUDGE GRIER. As to telling the particular persons who have spoken of him, to make up a character—it is hard to say. I know the character of many persons, and yet I could not tell any individuals who have spoken of them—and it would not be his general character if I got it from one or two.

MR. COOPER. It is proper to know whether he is speaking of his character generally, or for truth and veracity, and he has stated in every instance that the conversation was as to his general character, and not particularly as to truth and veracity.

MR. LUDLOW. (To the witness.) Where do you reside?

ANSWER. In the Northern Liberties.

QUESTION. What is your business?

ANSWER. Collector of water rents the last year. I am a collector still. I reside where I have lived for nine years, in Wood street, below Sixth, No. 132.

William D. Francke sworn.

Examined by Mr. Stevens.

QUESTION. Are you acquainted with Henry H. Kline?

ANSWER. I am, sir.

QUESTION. How long?

ANSWER. Fourteen years.

QUESTION. Do you know his general character for truth and veracity?

ANSWER. Only from hearsay.

QUESTION. What is that?

ANSWER. It is bad.

QUESTION. From that character, could you believe him on oath?

ANSWER. I think not, sir.

Cross-examined by Mr. Cooper.

QUESTION. Where do you live?

ANSWER. No. 14 Orange street.

Daniel Evans affirmed.

Examined by Mr. Stevens.

QUESTION. Do you know Henry H. Kline?

ANSWER. I do.

QUESTION. How long?

ANSWER. I have known him for some years.

QUESTION. Do you know his general character for truth and veracity?

ANSWER. I do.

QUESTION. What is it?

ANSWER. It is bad.

Cross-examined.

MR. LUDLOW. Who subpœnaed you?

ANSWER. I was not subpœnaed at all.

QUESTION. Then you came voluntarily?

ANSWER. I was asked to come by one of the counsel.

QUESTION. Where do you live?

ANSWER. Marshall and Buttonwood.

MR. STEVENS. What is your business?

ANSWER. Fire proof chest maker.

MR. BRENT. One of the attornies requested you to come; how did he know you would give this evidence?

ANSWER. I don't know.

QUESTION. Did you state it to him of your own accord?

ANSWER. I informed the attorney.

QUESTION. You informed him that you could give it, and he requested you to come?

ANSWER. I can give a little more, if you want it.

MR. BRENT. Give it all.

WITNESS. On the 18th of September last, I had some business at Mr. Lee's office, the gentleman sitting here, in Sixth street, above Arch, and Mr. Lee was writing a paper, very kindly, that I went there to get; and while he was was doing that, this Kline came in there, and from the conversation he had with Mr. Lee, which I suppose I have no right to mention here, I stepped up to this gentleman, and asked him if he was the person that had been to Christiana, and he said he was, to catch these blackies. I said to him, I have heard from good authority that Mr. Lewis, a man I never saw, came there just in time to save your life. Well, he twisted around there a good while, and didn't say a great deal, and finally said, "At the time they came up there was a great confusion, hallooing, shouting and hooting going on, and it was hard to tell much about it; but he saved his own life by getting behind Lewis's horse, and dodging about, and that he saved his life, and that they could not shoot him without shooting the damned Quaker abolitionist." Then we talked the matter over a little more, Mr. Lee was hunting my paper, and I put the question to him, and he said "the damned Quaker abolitionists had instigated this affray before."

QUESTION. From whom did you hear that Lewis came in time to save his life?

ANSWER. I heard it at the corner of Spring Garden and Seventh streets, in the hardware store there.

QUESTION. Who from?

ANSWER. It was a white man in Kinderdine and Justice's store.

QUESTION. Who said it?

ANSWER. It is hard to tell which one—they were all talking about it.

QUESTION. And you heard that Lewis had come in time to save Kline's life?

ANSWER. Yes.

QUESTION. And you told Kline, and he said there was a good deal of noise and confusion when they came up—what *they?*

ANSWER. That is the thing—that is what I wanted to know. I was talking about Lewis myself.

QUESTION. He said he had protected his life behind Lewis's horse?

ANSWER. Yes.

QUESTION. Then Lewis had a horse?

ANSWER. According to his statement.

QUESTION. When was that?

ANSWER. On the 18th of September.

QUESTION. Did you know he made a deposition before that?

ANSWER. I never read that.

QUESTION. You hadn't seen his evidence in the papers at the time of this conversation?

ANSWER. No.

QUESTION. Could Colonel Lee hear this conversation?

ANSWER. I don't think he could; he was hunting the papers. My little boy heard part, when he said he got behind the horse, and they could not shoot him without shooting the damned Quaker abolitionist.

MR. BRENT. Have you anything else you can tell?

ANSWER. I can't recollect anything else.

JUDGE GRIER. When a witness is called to character, I don't know that this is proper—it is taking up time to no purpose.

George Simpson affirmed.

Examined by Mr. Stevens.

QUESTION. Do you know Henry H. Kline?

ANSWER. I do.

QUESTION. How long?

ANSWER. I suppose fifteen years or more.

QUESTION. Do you know his general character for truth and veracity?

ANSWER. I have heard a good deal of his general character for truth and veracity.

QUESTION. What is his general character for truth and veracity?

ANSWER. It is bad.

QUESTION. From that character would you believe him on oath?

ANSWER. I would not.

Cross-examined.

MR. LUDLOW. Were you subpœned to attend this trial?

ANSWER. I was.

QUESTION. Have you ever said publicly in the presence of one or more persons that you believed any man who would go for a negro, ought not to be believed on oath?

ANSWER. I said I believed, they could not get a decent man to be a dog-catcher, a hog-catcher or a nigger-catcher.

QUESTION. Have you not said more than once that you would not believe a man who went on such business, on his oath?

ANSWER. Not on that business alone, but I said what I told you.

MR. COOPER. If he was a dog catcher and a hog catcher, and a nigger catcher—all three, you would not believe him?

ANSWER. Yes, all three.

QUESTION. Where do you reside?

ANSWER. No. 475 North Front-street.

QUESTION. Who subpœnaed you?

ANSWER. I can't say, I received the subpœna by an officer, I can't recollect his name.

QUESTION. Was it Jacob Albright?

ANSWER. I believe it was.

Isaiah G. Stratton sworn.

Examined by Mr. Stevens.

QUESTION. Do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. I know it from reputation.

QUESTION. What is that character?

ANSWER. I think it is bad.

Cross-examined.

MR. COOPER. Who subpœnaed you?

ANSWER. That is more than I can tell.

QUESTION. Was it Mr. Albright?

ANSWER. I was not at home when the gentleman called with the subpœna.

QUESTION. Where do you live?

ANSWER. At 256 Ridge Road.

Wm. Strourd's sworn.

Examined by Mr. Stevens.

QUESTION. Are you acquainted with the general character of Henry H. Kline for truth and veracity?

ANSWER. I should suppose that I was.

QUESTION. How long have you known him?

ANSWER. About eleven years.

QUESTION. What is that character?

ANSWER. I should term it bad.

Cross-examined by Mr. Ludlow.

QUESTION. Who subpœnaed you?

ANSWER. Mr. Albright.

QUESTION. What is your business?

ANSWER. A ladies' shoemaker by profession, I don't follow that now.

QUESTION. Have you been a police officer?

ANSWER. Yes.

QUESTION. Are you one now?

ANSWER. No.

QUESTION. What is your business now?

ANSWER. I hold a situation under the general government, I am a night inspector.

Jacob Walker sworn.

QUESTION. Do you know the general character for truth and veracity of Henry H. Kline?

ANSWER. It is very bad indeed.

QUESTION. You *do* know it?

ANSWER. Yes.

Cross-examined by Mr. Ludlow.

QUESTION. Who requested you to come here?

ANSWER. I can't tell the constables name?

QUESTION. Was it Mr. Albright?

ANSWER. Yes, sir.

MR. READ. I suppose we have have a right to employ an individual to subpœna our witnesses.

MR. COOPER. We don't object to that, we have a right to know this.

MR. READ. Certainly, we will tell you with pleasure, but I suppose we have a right to employ a man to serve our subpœnas, as the government has?

MR. STEVENS, It may be that they think Mr. Albright's character is so bad that it would contaminate the witness by serving a subpoena on them.

John Hinkle sworn.

QUESTION. Do you know the general character for truth and veracity of Henry H. Kline?

ANSWER. Yes, sir, it is very bad what I do know of it.

QUESTION. How long have you know him?

ANSWER. Abont twenty years.

Cross examined.

MR. COOPER. Do you speak of his general character, or for truth and veracity?

ANSWER. Of his general character; I never heard anything good of him in my life.

QUESTION His character for truth and veracity, what do you know of that?

ANSWER. From what I have heard as to that, I should hardly believe him on his oath, unless he was interested.

QUESTION. If he was interested you would believe him?

ANSWER. If he was interested I would not believe him.

QUESTION. If he was not?

ANSWER. If he was not he might tell the truth.

QUESTION. Did Mr. Albright subpœna you?

ANSWER. Yes, I believe he did, I got the subpœna.

Norman Ackley sworn.

QUESTION. Do you know Henry H. Kline?

ANSWER. Yes.

QUESTION. How long?

ANSWER. Between the neighborhood of ten and twelve years.

QUESTION. Do you know his general character for truth and veracity?

ANSWER. It is pretty bad.

QUESTION. You know it?

ANSWER. Yes, sir.

Cross-examined.

MR. COOPER. Have you ever heard the character of Mr. Kline for truth and veracity spoken of?

ANSWER. I have.

QUESTION. By whom?

MR. STEVENS. The Court, I think, (I do not care,) but I think the Court intimated that that was not proper.

MR. COOPER. We do not usually ask questions that are not proper.

WITNESS. I have heard Mr. Walker, a man who keeps a grocery store at Front and Coates street.

QUESTION. When?

ANSWER. Some eight years ago.

QUESTION. What is your occupation?

ANSWER. I am an officer.

QUESTION. A constable?

ANSWER. A marshal and a constable together. I am an officer of the Marshal's police, and constable.

Anthony Hoover sworn.

QUESTION. How long have you known Henry H. Kline?

ANSWER. Twelve or fifteen years

QUESTION. Do you know his general character for truth and veracity?

ANSWER. From what I have heard, yes, I know some.

QUESTION. What is it?

ANSWER. It has been bad whenever I have heard.

Aaron B. Fithian sworn.

QUESTION. How long have you known Henry H. Kline?

ANSWER. About twelve or fifteen years.

QUESTION. Do you know his general character for truth and veracity?

ANSWER. I have heard it spoken of.

QUESTION. What is it?

ANSWER. It is pronounced very bad.

George K. Wise sworn.

QUESTION. Do you know the general character for truth and veracity of Henry H. Kline?

ANSWER. From hearsay I do.

QUESTION. Very long?

ANSWER. For a number of years. I could not say. Probably eight or ten.

QUESTION. What is that character?

ANSWER. It is bad.

John Mackey sworn.

QUESTION. How long have you known Henry H. Kline?

ANSWER. For a number of years. Perhaps eight or ten, and perhaps longer.

QUESTION. Do you know his general character for truth and veracity?

ANSWER. I should say it was bad.

Cross-examined.

MR. CUYLER. Who subpœnaed you?

ANSWER. Jacob Albright.

QUESTION. Who did you ever hear speak of Mr. Kline's character for truth?

ANSWER. I have heard Charles Muschert.

QUESTION. When?

ANSWER. I have heard him speak within a month.

QUESTION. Did you ever hear him speak before a month?

ANSWER. I don't think I have. I heard Mr. Walker

QUESTION. Within a month?

ANSWER. Yes.

MR. REED. What was his character two years ago?

ANSWER. As far as I have heard, people would generally say, when he came in question, would rather doubt him, as if they had no confidence in him. I have always looked on him in that way.

Andrew Redheffer, sworn.

QUESTION. How long have you known Henry H. Kline?

ANSWER. Upwards of twenty years.

QUESTION. Do you know his general character for truth and veracity?

ANSWER. I could say within the last ten years, I would speak of that particularly.

QUESTION. What is that character?

ANSWER. It is bad.

Cross-examined.

MR. COOPER. Where did you know Kline?

ANSWER. In and about the Northern Liberties.

QUESTION. Has he lived there during this period you spoke of?

ANSWER. I can't say he has—he might have lived there in 1840.

QUESTION. Has he lived there in the last ten years?

ANSWER. I don't know—I have seen him.

QUESTION. Did you know him when you came here—didn't you ask a person to point him out?

ANSWER. No. I think I knew him from the time he was young, and his brother George.

QUESTION. Didn't you call on a person to point him out to you?

ANSWER. Oh! no.

John McEwen, sworn.

QUESTION. Do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. I do.

QUESTION. What is it?

ANSWER. It is bad, very bad

Cross-examined.

MR. LUDLOW. Have you ever had any difficulty with Mr. Kline?

ANSWER. No, sir.

QUESTION. Are you certain of that?

ANSWER. I am.

Jacob Albright, jr., on voir dire.

QUESTION. Did you serve that subpœna on the witnesses therein named?

ANSWER. I have—except Jonathan Thomas, Ambrose Powell, and Cyrus Brinton, and Allen Evans accepted service of it. I showed him the subpœna, and he accepted service, and told me I need not read it to him

MR. STEVENS. We wish to call the names of these witnesses, to see if they are here?

John Jenkins, called.

JUDGE GRIER. Did you serve the subpœna personally upon John Jenkins?

WITNESS. Yes, sir he knew I had the subpœna and accepted it.

The names on the subpœna were called and the witness says he served the subpœna on them personally, except Allen Williams.

MR. STEVENS. Did you serve it on Allen Williams?

ANSWER. I served it on Allen Evans, it should be.

MR. STEVENS. We will have to pass him then. We ask attachments for these witnesses.

JUDGE GRIER. Let the crier call the names and if they dont answer, the clerk will make the attachments.

John Carr affirmed.

Examined by Mr. Stevens.

QUESTION. Do you know Harvey Scott?

ANSWER. I am acquainted with him.

QUESTION. Where did he live at the time this affair took place at Parker's house?

ANSWER. At my house, in my employ.

QUESTION. State where he was on the night between the 10th and 11th of September; the night previous to this affair at Parker's house?

MR. COOPER. We object to this.

JUDGE GRIER. Let the gentleman state what he offers to prove, and the object.

MR. STEVENS. You will remember that the United States gave in evidence by Kline, the fact that on the ground at the time that the defendant and others were there, Harvey Scott was present; that he saw him, and has seen him since. We now offer to prove by this and other witnesses, that at that time he was in the house of Mr. Carr, four miles distant; that he was fastened into a room that night by Mr. Carr, and let out in the morning by Mr. Carr about day break; that he took breakfast, and that he went and struck all day on the anvil, he being a blacksmith, and was not away; to prove that what the United States gave in evidence by Kline, is utterly and totally false.

MR. COOPER. The witness did, without being interrogated to the point, state in his examination-in-chief, that Scott had been present; he believed a negro was on the ground named Harvey Scott. The counsel for the prisoner, when the witness was turned over, proceeded, or were about to proceed to cross-examine Mr. Kline as to the presence of Harvey Scott; an objection was interposed, and the question, if I remember rightly, was not asked.

MR. STEVENS. There was not any objection,

and I went thoroughly through the cross-examination, to see if he was certain. By turning to pages 93 and 94 of the printed notes, you will find it so.

MR. COOPER. Perhaps it is as stated: but we objected at the time his name was mentioned. They proceeded to examine whether Scott was present or not; we objected to their doing so, with the intention of contradicting Kline afterwards.

MR. STEVENS. The gentleman had better look to the book; they did not object at all.

MR. COOPER. We did object at the time; and there was an intimation from the Court, either in reference to this particular witness, or another, that they could cross-examine for the purpose of contradicting afterwards; and this fact I am perfectly certain of, that without being interrogated as to the particular point, that the witness did say he believed Scott was on the ground. I don't think it is proper, therefore, for them to take up this question now, or at any time, for the purpose of contradicting Kline, who was their witness for that purpose.

MR. STEVENS. In the examination-in-chief on page 93, the witness says, "they were armed with guns, &c." (He reads from the notes.) Then on page 106 is the commencement of my question, "At Lancaster you stated that you saw," (he reads from notes.) That is the testimony of the witness with regard to the entire and absolute certainty of the witness, that Harvey Scott was present at that time. I want to prove this is all false.

JUDGE GRIER. It having been a matter stated in the examination-in-chief.

MR. BRENT. The question does not bring it out on the part of the prosecution.

JUDGE GRIER. The man was giving a narration of facts.

MR. BRENT. At that time, he had finished his narrative, and was responding to questions. He was speaking of the negroes generally, and the question was, what were these negroes armed with? He says, with guns, clubs, &c. (Reads.) There was no examination as to Harvey Scott's being there, in particular. Afterwards, as the cross-examination, pp. 104–5, he says that he was there. We want to call attention to that fact, and to submit the proposition, whether if that is of a collateral matter, which the Court has decided so collateral that it could not be introduced by the defence, and then to prove the alibi; then it matters not, whether the fact came out in examination-in-chief, or in cross examination. If it be immaterial matter, I dont think it can be asked. But in this case, the United States did not asked questions to ascertain whether Harvey Scott was there; the witness volunteered to state it.

JUDGE GRIER. That cannot be called collateral matter which the witness, in the examination-in-chief, gave as part of the very *res gestæ*. It may be collateral, as for instance, suppose he had in the examination-in-chief, said certain persons stood behind a certain tree, and did so and so, could not the other party show there was no such tree there? It was a mistake in fact, or a willful mistake. If it is stated as part of the *res gestæ* you have a perfect right to test either his veracity or memory, and you can show that he has made a mistake; or told what was not true; that will be for the jury. I think the testimony has a right to be gone into under the circumstances.

MR. STEVENS. Edward, state where Harvey Scott was, at the time I have mentioned?

WITNESS. I knew him to go up stairs into my garret, on the night of the 10th between eight and nine o'clock. I buttoned the door after he went up, on the outside, from the stairs in the room, where the stairs started from, and knew nothing more about him till morning. A quarter of an hour before sun-up, I unbuttoned it, and called to him to come down, and he answered, and came down directly after, and made a fire in my house. Immediately after he made the fire, he went for a cow in a two-acre lot; he brought her down between my garden and shop, where we generally milk her; there is a flat piece of ground there; he left the cow, and went into the shop, and went to work. He worked till breakfast time, and we had our breakfast, and he went back with me into the shop, and was not out of my employ from the shop all that day.

QUESTION. Are you a blacksmith?

ANSWER. I am, and he came there to serve an apprenticeship with me; he blowed and struck for me all that day, the 11th.

QUESTION. How far is your house from Parker's?

ANSWER. I would suppose about three miles, I never knew whether it was measured.

QUESTION. Who was at your house besides yourself that night?

ANSWER. My son-in-law, John S. Cochran.

QUESTION. Was there any body else there that night you buttoned the door?

ANSWER. There was two of my grand-daughters slept over the room from where the stairs started into the garret—he had to come in that room to go into the garret.

Cross-examined.

MR. LUDLOW. Was there a window in the room where Harvey Scott slept?

ANSWER. Yes.

QUESTION. How high is it from the shed or the ground?

ANSWER. I would suppose between eight and nine feet down to the roof of the shed.

QUESTION. How far is it from the eave of that shed to the ground?

ANSWER. I suppose at one corner not more than three or three and a half feet.

QUESTION. Could a man of ordinary size get out of that window on to the shed, and from the shed to the ground?

ANSWER. It might be possible for that man to get out of the window, by dropping himself, but he would not reach.

QUESTION. If a man of five feet were to get out of the window and hang to the sill, how far would his feet be from the shed?

ANSWER. I don't know what length his arms would be, I suppose he could not touch the roof.

QUESTION. Would he not be a short distance from it?

ANSWER. Not far.

QUESTION. Is there any difficulty in going from that roof to the ground?

ANSWER. No.

QUESTION. Do you know whether Harvey Scott was in or out of the room, from the time you buttoned the door the evening previous, till a little before sun-up the next morning?

ANSWER. That I don't know any thing about.

QUESTION Could he not have been absent from that room and you know nothing about it?

ANSWER. It is possible he might.

MR. READ. How could he have got back there so as to be there in the morning?

ANSWER. He could not possibly have got back without some person to help him.

JUDGE GRIER. How do you identify that particular night and morning, with the night of the 10th and morning of the 11th, when this murder was committed?

ANSWER. I recollect that from a circumstance that took place on the evening before this; Harvey Scott and J. S. Cochran went out to Penningtonville, on the evening of the 10th, to a store, and they came back together. It was then near about the time I intended to go to bed. J. S. Cochran called me into the room to look at goods he had bought, and Harvey Scott was in the room with me, and all three were looking at them. From that I charged my memory with that evening.

QUESTION. When did you first hear the next day of the transaction?

ANSWER. The next morning there was a man brought me a quarter of veal just after we were done breakfast. Stocker Coates was his name, and Harvey Scott and me were standing in the yard, after breakfast, and Stocker Coates said he hadn't weighed the veal, and if I would have my steel-yards brought up to the house he would weigh it, and he sent Harvey Scott for them, and he brought them up and we weighed it, and the value I gave him credit for—we had dealings in the shop—from these circumstances I charged my mind with it.

JUDGE GRIER Did you hear then any thing about the affair at Christiana?

ANSWER. Not till a little while afterwards. William McClyman came along and told us about the affray just after that.

QUESTION. Are you sure that the bringing of the veal there on that day and the news of the murder were on the same day.

ANSWER. The veal and the news of the murder was on the same day.

Cross-examined.

MR. Cooper. You made an entry in the book?

ANSWER. Yes, sir.

QUESTION. Have you the book with you?

ANSWER. No, sir, I didn't bring it with me. It is the book I keep my accounts in. It was on the 11 of September. It was on Thursday.

MR. BRENT. When did you first call your mind, particularly to the fact that you found Harvey Scott there the next morning? When did you first hear about it?

ANSWER. On Thursday.

QUESTION. You then recollected you had fastened him up at night and let him out in the morning?

ANSWER. Yes.

QUESTION. Your attention was turned to it on Thursday?

ANSWER. Yes. William McClyman, that hauled bark from J. Gilfallan's, was up to Penningtonville that day, and came along back, and got to telling us about the riot. Harvey Scott and I were in the shop—and Harvey Scott said, I am a nigger out of that scrape.

QUESTION Did he ask where Parker's house was?

ANSWER. Yes; he asked in what part of the country it was located—and he didn't appear to know any thing about it—he asked me afterwards about it—where the brick mill was.

QUESTION. He asked more than once?

ANSWER. Yes; several times. They did not take him from my house till the following Saturday—it was at the shop they took him.

JUDGE GRIER. At the time of his arrest did you recur to the fact that you had shut him up at night, and he was there in the morning?

ANSWER. I began to recollect, at the time, Wm. McClyman, told us there had been a riot on Thursday, and after hearing him say, I am a nigger out of that scrape, I began to recollect where he was, and whether at my house or not.

MR. BRENT It was on Thursday you began to recollect it?

ANSWER. Yes.

QUESTION. Didn't you, at Lancaster, say you first had your attention called to it on the Saturday following?

ANSWER. I don't know whether I did or not—I don't know that I did.

QUESTION. You were examined at Lancaster before Alderman Reigart?

ANSWER. Yes.

QUESTION. I will read, and you will see if you recollect this statement—"The Saturday after, I first recollected that I buttoned him up that night."

ANSWER. I must have been misunderstood.

QUESTION. You think you didn't say it was Saturday?

ANSWER. I think I did not.

QUESTION. At what time of day did you unbutton this door?

ANSWER. A quarter of an hour before sun up.

QUESTION. Did you look at the sun?

ANSWER. No, sir, I am not certain about that; it was about that time.

QUESTION. You never unbuttoned the door to let him out until after sun-up?

ANSWER. Likely I did.

QUESTION. Why do you recollect it was a quarter of an hour of sun up?

ANSWER. I cant tell the reason—I recollect it. I called myself to recollect to know something about that morning; what time it was when McClyman's told us of the riot, then I recollected.

QUESTION. How often before that had you unbuttoned that door in the morning to let him out?

ANSWER. I could not say; I have done it a half a dozen times or more before.

QUESTION. How long had he been sleeping in that room?

ANSWER. All the time he was with me; I could not say how long it was; he had been out harvesting sometimes.

QUESTION. How long had your grand-daughters been there?

ANSWER. For two weeks.

QUESTION. Every night while they were there, did you fasten that door at night, and open it in the morning?

ANSWER. I cant say; sometimes they buttoned it themselves; I generally opened it in the morning myself.

QUESTION. Didn't you say, you always opened it in the morning?

ANSWER. I cant say; that time I recollect it.

MR. STEVENS. By whom were you called to button it that night?

ANSWER. One of my grand-daughters, who is in the city now.

MR. COOPER. How come she to call you that evening?

ANSWER. She had gone to bed before the black man went up that evening.

QUESTION. Were you down stairs when she called you?

ANSWER. No, sir; I was in a room adjoining hers, under where this man slept; I came out of my room and went into hers to do it.

MR. BRENT. If she could call you why didn't she do it herself?

ANSWER. I dont suppose she liked to get up after she had stripped.

QUESTION. Were you in your bed-room when she called?

ANSWER. I was.

QUESTION. In bed?

ANSWER. I think not, I am not certain; it was somewheres about the time I had got ready to go to bed.

QUESTION. Was it warm there?

ANSWER. Not very warm; it was in September.

QUESTION. That was the only reason for it, that you have given?

ANSWER. I dont know any other reason.

QUESTION. He had passed through her room after she had retired; she had gone to bed when he came back?

ANSWER. She had gone to bed when he went up stairs. I don't know whether she had before he came back from Penningtonville, or not.

MR. LUDLOW. Your bed-room and his join?

ANSWER. My bed-room and that where my grand-daughters slept, were on the same floor. The stairs from the lower story came up into the room where they slept, and you had to come up those stairs. I passed through their room into another room at the end of the house, and right out of their room he goes up into the garret.

MR. STEVENS. It was a two-story house?

ANSWER. Yes.

MR. COOPER. Was there a garret above the second story?

ANSWER. Yes.

QUESTION. You stated at first that the negro slept in the garret?

ANSWER. So I say.

QUESTION. He didn't sleep on the same floor with you?

ANSWER. No, sir, he slept immediately above where I did

John S. Cochran, sworn.

QUESTION. Are you the son-in-law of Mr. Carr?

ANSWER. Yes.

QUESTION. Where were you, and where was Harvey Scott on the evening of the 10th of September last, and tell all you know about it?

ANSWER. I was at home on the evening of the 10th, that is, in part of John Carr's house. Harvey Scott and I went to Penningtonville that evening after supper. I suppose a little while after dark, and returned home about eight o'clock, and the last I saw of Harvey Scott, was going up into his bed-room—that was in the garret of the house that Mr. Carr lives in; and in the morning when I got up, I seen him just going off the end of the porch.

QUESTION. What time was that?

ANSWER. A little before sun up. I think I seen him eat his breakfast, and seen him after breakfast, off and on until about eight o'clock.

QUESTION. Where did you go then?

ANSWER. Up to my shop where I work only a quarter of a mile from the house; then I didn't see any thing more of him till about dinner time. That is about all I know.

QUESTION. You saw him going off the porch before sun-rise; what day of the month was that?

ANSWER. On the eleventh.

QUESTION. How do you know it was the 10th that you went to Peningtonville?

ANSWER. Hearing of this murder the next day I traced my memory back and I knew it was the 10th.

QUESTION. You heard of this murder next day?

ANSWER. Yes.

QUESTION. You said you went to Penington-ville; what for?

ANSWER. I got some things at the store.

QUESTION. Have you a bill of those things?

ANSWER. Yes, sir. (Produces the bill.)

QUESTION. What is the date of it?

ANSWER. September 10th.

Cross-examined.

MR. COOPER. When did you get this bill?

ANSWER. On the evening of the 10th of September.

QUESTION. In whose hand-writing is it?

ANSWER. I am not able to say. It is either William Patrick's or Mr. David Welsh's, it was one of the storekeepers.

QUESTION. You didn't pay the cash?

ANSWER. No, sir, it was charged.

QUESTION. Has this bill been in your possession ever since?

ANSWER. Yes, sir. When I don't pay the cash I just get a bill from him, and I had some other dealings.

QUESTION. You have carried this in your pocket ever since?

ANSWER. Yes, in my pocket book

QUESTION. Did you show it at Lancaster?

ANSWER. No.

William McClyman is called and sworn.

MR. STEVENS. Will you be so good as to state where you were on the 11th of September, when this affair took place at Parker's, and any thing that you know about where Harvey Scott was that morning.

ANSWER. About the time the riot took place I was at home. I left home at half-past six o'clock, and I went to Penningtonville to take a load of bark. I was near Cochransville, three miles south of Penningtonville. I went there to a tannery, and drove up where Mr. Carr lived. I observed George Washington Harvey Scott; he was at work there, and the reason I observed it I had been up some evenings before, and George had struck a man with a hammer, and that man told me he was going to prosecute George, and George told me he would run away. When I went up that morning I saw George at work. Thinks I he isn't gone yet. I came to get another load, it was Floods' Hotel that I went in, and got a glass of whiskey and paid for it. It was between five and ten minutes past seven o'clock. I started with the intention of making three trips. I went about three-quarters of a mile south of Penningtonville I think, and then drove on to McCullan & Reynolds' and unloaded my bark, and one of their agents told me there was one man killed and another wounded, and there was a great quantity of colored men there. When I was going home it was about nine o'clock—it was not far off. I told Mr. Carr of the riot, and when he heard it, says he, Nick is out of that scrape. Mr. Carr says, I shall clear him of that.

MR. COOPER. What time was it that you spoke of the riot.

WITNESS. It was between seven and eight o'clock. I had to unload the bark. I think it was about that time.

MR BRENT. You were twice at Carr's, I believe.

ANSWER. Yes sir, that is all. I passed there a second time going up.

QUESTION. The first trip, you heard of the news.

ANSWER. No, sir, not when I was going up.

QUESTION. It was seven o'clock.

ANSWER. Yes, sir.

QUESTION. The second time you went there, you came back.

ANSWER. Yes, sir.

MR. COOPER. How do you know it was the twelfth.

ANSWER. It was the eleventh.

QUESTION. It was the eleventh, I mean.

ANSWER. I was carrying bark for another man, and I charged him on that day.

MR. BRENT.—How can you tell you saw Harvey Scott on the first trip, might you not have seen him on the second trip when you return-from Penningtonville. What was there that fixes it on your mind that it was in the morning when you first went there, rather than at nine o'clock.

ANSWER. He had told me about a few evenings before that he would run off.

QUESTION. You state you considered he hadn't done it.

ANSWER. Yes, sir, says I, he had'nt done it yet.

QUESTION. You didn't stop as you went up?

ANSWER. No, sir.

QUESTION. How was it you saw him?

ANSWER. He was blowing the bellows in the shop for Carr.

QUESTION. How often did you pass the shop before that, every day?

ANSWER. I generally run two trips only about two days in the week, and then I was home on the farm.

QUESTION. How long had you been running these trips?

ANSWER. For two years: twice a week.

QUESTION. Every morning you passed by Carr's?

ANSWER. Yes, but I hadn't been up for some time before that.

QUESTION. How long was it?

ANSWER. About two days.

QUESTION. How long did Scott reside in that neigborhood?

ANSWER. About the first of March I saw him there.

QUESTION. Did he at the time of the conversation make any inquiries about Parker's house and the brick mill?

ANSWER. No, sir. I do not know where Parker's house was.

MR. STEVENS. He said nothing of the kind?

MR. BRENT. What did he say? That is all.

Mr. Thomas Liston is called and affirmed.

Mr. STEVENS. Do you know the general character for truth and veracity of Henry H. Kline?

ANSWER. I have heard it spoken of, sir.

QUESTION. What is it?

ANSWER. I should consider it bad.

MR. LUDLOW. Did you ever have any dispute with Mr. Kline?

ANSWER. No, sir.

QUESTION. Never, on any occasion?

ANSWER. No, sir.

QUESTION. When did you hear his character spoken of?

ANSWER. I have known Mr. Kline for ten or twelve years, sir.

William Hopkins is called and sworn.

MR. STEVENS. Do you know Henry H. Kline?

ANSWER. I do sir by sight, not personally.

QUESTION. Do you know his general character for truth and veracity?

ANSWER. Yes, sir.

QUESTION. What is it?

ANSWER. It is generally bad what I have heard of it.

MR. LUDLOW. Did you ever have any difficulty with Mr. Kline?

ANSWER. Never in my life.

QUESTION. Had you a difficulty with him at Christiana?

ANSWER. No, sir.

MR. BRENT. Were you up at Christiana?

ANWSER. I was.

QUESTION. Who did you go up with?

ANSWER. I went up with the police.

QUESTION. Did you see Kline maltreated in a room?

ANSWER. I seen him have a scuffle with a man by the name of Alberti. He had a fight up there.

QUESTION. You took no part in it?

ANSWER. No, sir.

James Smith is called and sworn.

MR. STEVENS. Do you know the character of Henry H. Kline, as far as regards truth and veracity?

ANSWER. As far as I have heard.

QUESTION. Do you know it from reputation?

ANSWER. I do from what I have heard.

QUESTION. What is that?

ANSWER. I have always considered it to be bad. Not cross-examined.

William Nutt is called and affirms

MR. STEVENS. How long have you known Henry H. Kline?

ANSWER. About twelve or fifteen years.

QUESTION. Do you know his general character for truth and veracity?

ANSWER. Yes, sir, it is bad.

Mr. LUDLOW. Who subpœned you?

ANSWER. Indeed I can't say.

Lewis Cooper is called and affirms.

MR. STEVENS. Will you be so good as to say whether you went to the ground or to Parker's, the morning of this affray, and what you saw there?

ANSWER. I did go to the ground that morning. When I went there I saw first, Joseph Scarlet in company with Dickerson Gorsuch. Dickerson Gorsuch was sitting by the road side, apparently very badly wounded, and Joseph Scarlet was in attendance, and seemed—

MR. COOPER. Not what he seemed.

WITNESS. Well, he appeared—

MR. BRENT. Not what he appeared.

WITNESS. Well, he was holding his head and keeping the sun from shining on him, and so on. I cannot say much more in regard to that. I inquired where those men were that were most wounded. He pointed to Dickinson, and said he was the man, and there was another one he said that was dead, his father. I think I proposed that we should take him up in a Dearborn that he might be cared for.

JUDGE GRIER. Whose Dearborn.

WITNESS. My own, and I went there with it for that purpose, for taking him where he should be cared for. Scarlet told me that Levi Pownell had given his consent he should be taken to his house. I then proposed he should be loaded into the Dearborn immediately, and in a few minutes he desired to be lifted up and put into it. Scarlet got in on one side, and I on the other. We took him to Levi Pownell's house; we assisted in getting him out there, and on to a bed. The Doctor was there at this time, and he assisted in dressing his wounds, and making him as comfortable as we could. I then asked him if we had done everything we could do for him, and if there were white men on the ground assisting the blacks against them. He said there was not.

MR. BRENT. Who said that?

ANSWER. Dickinson Gorsuch.

QUESTION. That same day?

ANSWER. That same day. I asked him if he knew if there were any white men on the ground. No, he said, shaking his head, there was not. I immediately left there and went back on the ground again. In the first place I didn't go over to the house.

MR. COOPER. I do not understand this.

MR. STEVENS. I don't want this myself, the Court made the inquiry, and wished to know if the neighbors sympathised with them, and to show that every thing was done that could be done in the neighborhood.

JUDGE GRIER. I am very glad to hear it, because the transaction altogether had reflected great discredit on the neighborhood. I am individually very much pleased to hear it, for it shows there were some individuals disposed to behave properly and save the character of the country.

QUESTION. Did you not ask Dickinson Gorsuch whether he had made such a statement.

MR. STEVENS. We do not desire him to say that, because Mr. Dickinson Gorsuch has said nothing of it.

MR. READ. If your Honors please, we shall say nothing about it, because Dickinson Gorsuch said nothing but what was perfectly true.

MR. BRENT. Every thing he said was true, and that is the statement here.

JUDGE GRIER. You can go on.

WITNESS. We then saw the dead body of Edward Gorsuch, and spoke to some bystanders that were there in relation to it, and thought it was time it was removed from there. I was informed that Esquire Pownell had an inquest out, and they were waiting for a report. I spoke to the Squire afterwards. He said they could not report there, and his body would have to be removed. I inquired where they would take it. They said they would take it to Christiana. As there was no other conveyance, and no machine for to carry him along, my dearborn was again brought forward to take the corpse to Christiana. I took it over, and after I arrived there I saw Henry Kline, at least the person that was told to me to be that man, and he was the Marshal, and so on. My attention was first taken to him by his declarations of two men yet being missing, and that there was no account of. I went up to him, and he said, if those men had only have minded what he had told them, these things would not have happened. He said he had called on them three different times, demanding them to come away. They would not come, and one Hanway, and that man Lewis, (was his language) declared that these men could not be taken without loss of life, or bloodshed, or something of that kind; and when they said that, he said he had called out to his men twice and they would not come away. He went away from the spot he said, and he had only got up into the woods a piece before the shooting commenced. I do not think I paid any further attention to his sayings,

I left him and went back into the house. The inquest, or the persons that were called upon the inquest, did not come there agreeable to appointment, and they had to get up another inquest, or at least a part of one, to finish out, instead of those who didn't attend.

MR. STEVENS. Were you one of them.

WITNESS. I was one of the number that was called upon to take the place of some of the absent ones. When the inquest had reported, I proposed to some of them, that there should be a respectable company of persons to accompany the corpse home to Maryland the next day. After some deliberation it was agreed upon that the corpse should be taken the next morning, and this company (I was one of the persons that was picked upon to accompany the corpse home.) I went home to make preparation to go the next morning. But the next morning I went round by Levi Pownell's to see how Dickinson Gorsuch was, so that I might report his condition when I got to Maryland. I then went to Dr. Thos. Pierce, who was in the house, I do not recollect particularly the conversation, but he commenced with speaking of the circumstances, and he spoke of Kline. He said he was a monstrous poor thing, or words implying it. If it was not monstrous it was something that conveyed the same meaning. He said he had no confidence at all in him, and that he ran or left, at the first intimation of danger. As my time was not very long, and there was not much to spare, we left there, and on our road to the creek he related to me the circumstances.

MR. STEVENS. How did you go to Christiana?

ANSWER. In the Dearborn.

QUESTION. Who were with you?

ANSWER. Dr. Thos. Pierce and a man to drive, he spoke of it, he said it was one of the most imprudent acts his uncle ever undertook, in fact it was the most imprudent one he ever saw in his life. I do not recollect the particulars, but he said more particularly, that Kline had left them, and that he called for his uncle to come away, his uncle came out a marked distance, he took it to be ten yards, that far towards him, and he saw his uncle's countenance change suddenly, and he turned back and says, my property is here, and I will have it or perish in the attempt. I thought it very rash for my uncle to say so, and as soon as he had said this there came up a bright yellow negro, one of his own slaves, and shot him. I cannot say whether he shot him, but when he came up to my uncle with his arm extended, he fell dead. When I saw my uncle fall it was time to leave, and to my understanding he got into the road somewhere, and saw Hanway, and runs to him and took hold of his saddle behind, Hanway keeping him between him and the negros. I understood him to hold by the saddle of the skirt or something of that kind to assist in his flight.

MR. G. L. ASHMEAD. Will your honors allow Dr. Pierce to be present during the examination of this witness?

MR. STEVENS. If the Court please, the object is to keep them out so they should not hear what has been said.

MR. G. L. ASHMEAD. The witness is stating a general conversation, and it is but fair that he should have an opportunity of being present to hear what is said by this witness, so that he may be enabled to correct any mistake that may be made: we only wish that fairness and justice may be done.

MR. STEVENS. I suppose Dr. Pierce can tell the facts just as well without hearing what he has to contradict, as by hearing his answers.

JUDGE GRIER. I do not know whether Dr. Pierce was examined as to having stated such matters.

MR. STEVENS. We asked that he would tell us something with relation to Hanway, and not for this general conversation.

MR. G. L. ASHMEAD. I do ask it, may it please the Court.

MR. BRENT. I understand the reason which excludes witnesses is, that where there are more than one, so that there is a combination, so that if there be any false testimony it may be arrested. But it is not as regards one witness, whose character is not impeached; and it does not seem to me right that he should not have an opportunity of hearing what is said, and admitting what he recollects, or explaining any other portions of it.

JUDGE KANE. Even further, to suggest inquiries to the witness which might bring out the absolute fact.

JUDGE GRIER. You have a right to have the witness present; you may have him here. If the gentleman is not presentf we cannot search all over the city for him.

WITNESS. I said he seemed to convey the idea he had hold of a stirrup leather.

JUDGE GRIER. Did the doctor say this?

WITNESS. Yes, sir, and kept hold of Hanway's horse, and kept Hanway between him and the pursuers; and that Hanway put up his hand and motioned, and called to them not to shoot, or words implying this. He pointed out to a place where Buley had lived, and so on. I do not recollect as there was much more said in regard to this point, in our conversation or company. When I got to Christiana, I there learned that there had been another delegation, or at least another arrangement made in regard to the corpse, and it had been taken in the night time and we were too late to accompany the corpse home. Dr. Pierce got in the fast line and returned home, and I retured to my house.

MR. STEVENS. Are you the son-in-law of Elijah Lewis?

ANSWER. Yes, sir.

QUESTION. Will you be so good as to state whether in that neighborhood constantly, early in the morning, that the neighbors do, or do not, blow horns to call their people to breakfast, and at that season of the year, and at that hour?

ANSWER. At that season of the year it is the custom of all farmers to call their hands to breakfast by blowing horns. Those horns blowing at this particular season would be awhile before sunrise till an hour after sunrise.

QUESTION. How far do you live from Parker's?

ANSWER. By the road I think it is a mile and a half.

QUESTION. But straight?

ANSWER. It would be about a mile.

QUESTION. Tell whether you heard any unusual blowing of horns that morning.

ANSWER. I did not.

MR. BRENT. Are you not one of the coroner's inquest, and one who examined the circumstances of that event

ANSWER. Yes.

QUESTION. Was not Lewis on the ground before the body was removed?

ANSWER. I didn't see him.

QUESTION. What time did you get there; it was when you got there that Scarlett held the head of Dickinson Gorsuch?

ANSWER. Yes, sir, I did.

QUESTION. Did you remain until the body was removed?

ANSWER. I did not.

QUESTION. You did not see the body when you came back, after being away three hours?

ANSWER. No, sir, not to the best of my recollection.

QUESTION. When you got to Christiana, was Kline there?

ANSWER. Yes, sir.

QUESTION. Why did not you examine Mr. Kline?

ANSWER. All the other persons who had been summoned on the jury beforehand said it was not necessary, because they said they didn't believe what he would say.

QUESTION. Did they know his general character?

ANSWER. I do not know.

QUESTION. Why would not they believe him who was a stranger with them?

ANSWER. He had told numerous different tales.

QUESTION. Then I understand you, although he was a witness to this transaction, and was a stranger to those jurors, that you would not examine him as a witness, on the ground was that he had told different tales.

ANSWER. That was the general belief.

QUESTION. Is this your name signed to this inquest?

ANSWER. It is.

MR. BRENT. I here will now read the inquest. (Reads.) You state in this the particulars of the transaction, that there was an attack made about four o'clock in the morning, upon a family of colored persons. Had you any evidence before you, sworn upon oath as regards that information?

ANSWER. None, except those who were on the inquest.

QUESTION. Who caused it to be inserted?

JUDGE GRIER. How did you make an inquest and refuse to examine witnesses? I want to understand the processes in that country.

ANSWER. The other gentlemen on the inquest seemed to have a knowledge of them.

MR. BRENT. Was any one of them sworn as to these facts you have stated here?

ANSWER. I do not know that they were, except the Doctor.

QUESTION. That was to show they had made a post-mortem examination.

ANSWER. Yes, sir.

QUESTION. Did Mr. Kline offer himself as a witness as to the facts?

ANSWER. Not that I heard of.

QUESTION. Did you not know that Elijah Lewis saw this transaction?

ANSWER. I did not.

QUESTION. Did you not know that Castner Hanway saw this transaction?

ANSWER. I did not.

QUESTION. Did you not hear some of the jurors say they were present?

ANSWER. I did not.

QUESTION. Was Castner Hanway there during the inquest?

ANSWER. He was not.

QUESTION. Or Lewis?

ANSWER. Neither that I know of.

QUESTION. Then Lewis was not present during the inquest?

ANSWER. No, sir.

QUESTION. Did not a colored man come to your place or house the day before for any purpose, if so, state what?

MR. STEVENS. Stop a moment, I do not know what is to be opened now.

JUDGE GRIER. It is no matter now.

MR. BRENT. The Court has allowed the defendants to introduce evidence here for the purpose of rebutting the prima-facie evidence on the part of the United States, for the purpose of unlawfully treating a law of Congress. The opening of the defence was, that there was an organization in that neighborhood, growing out of a case of kidnapping.

MR. STEVENS. We have offered no such evidence.

MR. BRENT. Dont interrupt me. It was a transactien that took place at the house of a Mr.——

JUDGE KANE. Chamberlain?

MR. BRENT. Yes, sir. That took place in January last. Now we proposed upon this strictly rebuting proof, that this organization did not succeed that transaction. We shall show in the first place, if we are not much mistakon, that this was a fugitive slave who was carried away on that occasion, and that he was not illegally taken or kidnapped. We shall show that this organization took place anterior to this transaction, and grew out of no case, where a man came for the purpose of arresting a fugitive slave. We shall show that this organization was to that effect, and that it was not an organization merely for the purpose of rescuing those who might be legally seized or taken away, and we wish to show that somebody had come into that neighborhood about that time, and called at the house of Mr. Cooper, and stated the general circumstances. It is a mere question as to order of proof.

JUDGE GRIER. You are now cross-examining the witness, when you come to offer rebutting, you can make a specific offer.

MR. STEVENS. I do not know whether I asked you as to whom Dr. Pierce owed his life?

ANSWER. I do not know that he expressed it particularly in the answer.

MR. BRENT. Did you see the body of Mr. Gorsuch, when it was first taken; you say it was carried in your wagon. Did you examine the the body, or the clothing, to see if there was any money in the clothing?

ANSWER. I did not.

QUESTION. Did any one in your presence examine the pockets, to see if he had any money?

ANSWER. They were examined at Christiana.

QUESTION. Was any thing found.

MR. STEVENS. We must object.

JUDGE GRIER. You cannot object at having a more full statement to the very things examined about.

MR. BRENT. He has spoken of the body, it is for the court to say.

JUDGE GRIER. It is evident you are only asking as to the examination-in-chief.

MR. BRENT. I want to know whether any money was found in his pocket at Christiana?

ANSWER There was not.

John Manderson is called and sworn.

MR. STEVENS. Do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. Yes, sir, I think I do.

QUESTION. What is it?

ANSWER. Bad, sir.

QUESTION. How long have you known him?

ANSWER. Ten or twelve years.

Jacob Glassmire is called and sworn.

QUESTION. Do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. I have no personal knowledge of the man.

QUESTION. What is his general character?

ANSWER. Bad.

MR. COOPER. When did you hear it spoken of?

ANSWER. I have heard it spoken of recently and some time ago; no particular time.

QUESTION. Some months ago?

ANSWER. Yes, sir.

Mr. John Houston is called and affirmed.

MR. STEVENS. Where did you live in September last?

ANSWER. In Christiana.

QUESTION. Be so good, sir, as to state whether about the railroad in the neighborhood of Christiana, any party of men were at work on the public works, and that in the morning it was habitual to call them to breakfast with a bugle horn with a reed in it?

ANSWER. There was and there has been since June last, a party that have been in the custom of blowing a horn in the morning, to call the hands to work very early; as early sometimes as daylight; it sometimes was before day-light; I did not hear it every day during the summer, but on two days in the week, Tuesdays and Fridays.

QUESTION. How came you to hear it on those mornings?

ANSWER. I had to get up soon on those mornings, in order to cut up the meat, being a butcher, and I had to get up early.

QUESTION. What kind of a horn was it?

ANSWER. It was a horn about sixteen or eighteen inches long, a small reed horn. A tin horn with a reed for the blower.

MR. G. L. ASHMEAD. Do you recollect what is called the Old Valley road?

ANSWER. It is just called the Valley road.

QUESTION. That part of the rail-road where the horn was blown, is it to the right or left?

ANSWER. Going that way it would be north or left, just what I wanted.

MR. STEVENS. What is right or left?

ANSWER. It is right coming from Penningtonville.

MR. G. L. ASHMEAD. When you get out of the long lane, going to Parker's house from the creek, what direction would that sound proceed from, right or left?

ANSWER. Going in the north direction from the creek to Parker's house, it would be directly behind you, and if you come in the long lane, it would be left.

QUESTION. In the long lane?

ANSWER. Yes, sir.

MR. STEVENS. Before you get to the long lane towards the rail-road?

ANSWER. Yes, sir, it is to the right hand.

QUESTION. When you turn down the long lane it would be the left?

ANSWER. Yes, sir.

MR. BRENT. Do you say it would be the right coming from the creek?

ANSWER. In a direct line it would be behind.

QUESTION. Before you get to the valley, how is it then?

ANSWER. Directly behind.

QUESTION. How far do you go on the valley road, before you get to the valley lane?

ANSWER. About one quarter of a mile may be.

QUESTION. Why did you say you heard the horn on Tuesdays and Fridays?

ANSWER. Those are the days I have to get up early, to see to killing the meat. I don't get up every day before sunrise.

MR. G. L. ASHMEAD. If you were at Sadsbury school house, going from there to the valley road, what direction would it be?

ANSWER. It would be to the left shoulder, going up the hill, rather behind though.

MR. STEVENS. I understand you, that the railroad lies to the north of the valley road?

ANSWER. Yes, sir, it is to the right then.

MR. LUDLOW. What direction is this railroad from the Sadsbury school-house and the place were these men were working?

ANSWER. From Sadsbury school-house, it would be northeast, as near as I can tell.

QUESTION. Is that right or left coming from the creek towards the valley road and towards Parker's house?

ANSWER. It is a little left.

MR. STEVENS. Is the school-house right of the valley road?

ANSWER. Yes, sir.

John Dittus is called and sworn.

MR. STEVENS. Do you know the general character for truth and veracity of Henry H. Kline?

ANSWER. I never heard any thing good of it. I have known him this twelve years

QUESTION. You have known him for twelve years?

ANSWER. Yes, sir.

MR. LUDLOW. Did you not ask Mr. Kline to subpœna you in this cause?

ANSWER. No, sir.

QUESTION. You never did?

ANSWER. No, sir.

Joseph Parker is called and sworn.

MR. STEVENS. How long have you known Henry H. Kline?

ANSWER. For the last ten or twelve years.

QUESTION. Do you know his general character for truth and veracity?

ANSWER. By hearsay.

QUESTION. Well then all you have heard.

ANSWER. Bad, generally.

MR. LUDLOW. Did you ever have any difficulty with Mr. Kline?

ANSWER. Once.

Enoch Harlan is called and affirmed.

MR. STEVENS. How long have you known Castnar Hanway?

ANSWER. It is about twenty-eight years, I think, since his father first came there, he was a small boy.

QUESTION. What has been during and about that time, his character as a good or orderly peaceable boy or citizen?

MR. COOPER. I know that the general rule is, then, in prosecutions for murder, riot, and misdemeanors of various kinds, that the evidence to prove them as peaceable men, is admitted. But where a political offence against the government is charged, I have never heard of a question being asked, and I do not think there can be a case found, in which evidence of character was admitted in a prosecution for treason, and an allegation of disaffection towards the government, and a disposition to overturn or resist the law. There have been men found guilty of treason, men whose general characters were particularly good, and men who, in all conditions of life, were exemplary, men who were just and upright in all their dealings, who were models in all social relations. I do not think, therefore, that this evidence ought to be admitted. I merely mention it, because there may be precedents taken from it.

MR. STEVENS. It seems to me there is but one ground. If he did not think it was not a doubtful case, there might be objections.

JUDGE GRIER. I can see no difference, in a case of treason and murder. Wherever there is contradictory and conflicting evidence on any subject on which guilt is imputed to a man, it is a question of probability often, whether such a man, or men of such a character, would do a certain thing. It might be a very conclusive proof against a man of notorious character, if a counterfeit $10 bill was found in his pocket,—it would be no evidence against a man who holds a high position in the community. It even might be supposed that in the case of the Western Insurgents, it would be proper evidence that the prisoner was a federalist and belonged to the government party; and I consider that any proof must be accepted that will have a tendency to prove the previous disposition on the part of the accused.

MR. STEVENS. The question asked you was, whether all the time you knew him, the character of Mr. Hanway was that of a peaceable, good, loyal, and orderly citizen?

WITNESS. He has not been in my particular neighborhood the whole of that time. He had moved out of the neighborhood, and had been back and forward in the neighborhood. I have known him for the whole of that time, but he has not resided in my immediate neighborhood. I have never known or heard any thing of his character, but that he was quiet, peaceable, and loyal; and he was so far as I have known him, and always has been rather remarkably a quiet man; rather more so than most young men, and of a peaceable disposition.

MR. ASHMEAD. You said he was loyal?

ANSWER. I never knew any thing to the contrary.

QUESTION. I want to understand what you mean by loyal. Would you understand one to be loyal whose sentiments were opposed to the Fugitive Slave Bill of 1851, and would refuse to assist in the execution of that law?

MR. STEVENS. If they ask the defendant in regard to this, I have no objection; but if they ask the witness, I object to it.

JUDGE GRIER. You must not catechise him in regard to his faith.

MR. ASHMEAD. I only want to understand, what he means by the word loyal, and what his definition would be generally, and I would like to put a case.

JUDGE GRIER. You had better let him put his own case.

MR. ASHMEAD. What do you mean by loyal?

WITNESS. What I mean by loyal, would be a man that would not resist the laws of his country by any more than the sentiment which he might entertain that they might be amended, and to effect the amendment by any constitutional means.

QUESTION. In the estimation of the word loyal, does this ingredient enter with it. A man who will by every obligation put upon him, abide by those obligations?

ANSWER. I don't exactly understand.

QUESTION. I want to know whether you understand by loyal, or a man who is loyal, one who would perform any duty and any obligation that the law of the land lays upon him?

ANSWER. I think there are some obligations which my conntry would require me to do, which I could not conscientiously do. I might be required to fight the enemies of my country, which I could not do.

QUESTION. I am asking you to state whether your idea of a loyal citizen consists of one who would obey every obligation which the law puts upon him?

ANSWER. I believe myself to be a loyal citizen.

MR. ASHMEAD. Answer my question. I have no doubt you are.

ANSWER. I would say there were some duties which the laws of our country might impose upon me which I could not conscientiously perform;

which if by not performing them I am not loyal, I am not a loyal citizen.

MR. STEVENS. Does Mr. Hanway belong to your sect?

ANSWER. He is not a member of either branch of the Society of Friends that I know of, and he never was to my knowledge.

MR. BRENT. These sentiments are a part of the religion of the sect to which you belong?

ANSWER. Yes, sir.

QUESTION. But outside of the doctrines of your religion, would you consider yourself or any man loyal, who had reserved to himself the right to nullify or obstruct the laws of his country?

ANSWER. I should suppose there was a distinction between nullify or obstruct. A man standing passively by, and seeing the law executed, and not executing it himself.

QUESTION. You don't consider a man is loyal, when surrounded by the officers of the United States, is standing by, and if ordered to assist and not do it?

ANSWER. If the law made it his duty to assist, as I said before, there are cases in which I could not assist myself.

QUESTION. Then I understand you to be a distinction between the active and passive?

ANSWER. Yes, sir. I could not conscientiously fulfill the duty myself.

The Court adjourned till Thursday, Dec. 4, 1851, at 10 A. M.

Philadelphia, Thursday, December 4th, 1851.

COURT WAS OPENED AT 10 O'CLOCK.

PRESENT, JUDGES GRIER AND KANE.

Jurors called and answered to their names.

Charles H. Roberts, affirmed.

MR. STEVENS. Do you know the general character for truth and veracity of Henry H. Kline?

ANSWER. I think I can say I do know it from those who know him, and who I know.

QUESTION. What is that character?

ANSWER. It is very bad.

Joseph M. Thompson, sworn.

MR. LEWIS. Are you acquainted with Castner Hanway, the defendant?

ANSWER. Yes.

QUESTION. How long have you been acquainted with him?

ANSWER. My intimate acquaintance was during the years 1844 and '45.

QUESTION. Did he live at that time in your neighborhood?

ANSWER. Within a mile and a half.

QUESTION. Have you known him before and since?

ANSWER. I had merely known him by sight. I had no intimate acquaintance with him till that time, when I had constant intercourse with him. I have known him ever since, though he has not been in the neighborhood lately.

QUESTION. What has been his character as a peaceable, quiet, orderly citizen?

ANSWER. Very good—I never heard it called in question.

George Mitchell, sworn.

MR. LEWIS. How long have you known Mr. Hanway?

ANSWER. About eight or ten years.

QUESTION. Did he during any of that period live in your immediate neighborhood?

ANSWER. He lived with me for fifteen months.

QUESTION. If you know, say what has been his character as a peaceable, quiet, orderly citizen?

ANSWER. Remarkably good.

Levi Wayne Thompson, sworn

MR. LEWIS. How long have you known Mr. Hanway?

ANSWER. I have known him for about fifteen years.

QUESTION. If you know, state what is his character, as a peaceable, orderly, well-disposed citizen.

ANSWER. I have known him to be a peaceable, orderly citizen. I know nothing else of him.

Andrew Mitchell, sworn

MR. LEWIS. How long have you known Mr. Hanway?

ANSWER. Some eight or ten years.

QUESTION. Have you known him intimately?

ANSWER. I was intimately acquainted with him, and have been for eight or ten years.

QUESTION. What character has he supported during that time?

ANSWER. I always thought he supported an exemplary character.

QUESTION. Of an orderly, well-disposed citizen?

ANSWER. Yes, sir.

Wharton Pennock, affirmed.

MR. LEWIS. State how long you have known Castner Hanway.

ANSWER. I have known him for about five years, and I have known him well for the last four years.

QUESTION. If you know, state what kind of a character he has supported during that period as a well-disposed, orderly citizen.

ANSWER. He has been unexceptionable—remarkably good.

Samuel Pennock, affirmed.

MR. LEWIS. State how long you have known Mr. Hanway.

ANSWER. About four years; from four to five.

QUESTION. If you know what kind of a character he has supported during that period as an orderly, well-disposed citizen, state what it is.

ANSWER. It is very good.

John Bernard, affirmed.

MR. LEWIS. How long have you known Mr. Hanway?

ANSWER. About five or six years since I have known him.

QUESTION. During that period what kind of a character has he supported as an orderly, well-disposed, quiet citizen?

ANSWER. Excellent.

Calvin Russel, affirmed

MR. LEWIS. How long have you been acquainted with Castner Hanway?

ANSWER. Ever since he was a boy.

QUESTION. Where did you know him?

ANSWER. At Doe-run, Chester county.

QUESTION. State what kind of a character he has supported as a peaceable, orderly, well-disposed citizen?

ANSWER. Very good—remarkable from his boyhood up.

Isaac Walton, affirmed.

MR. LEWIS. How long have you known Castner Hanway?

ANSWER. It is about fifteen or sixteen years, since I became acquainted with him by report.

QUESTION. How far did you live from him at that time?

ANSWER. He lived at my father's place.

QUESTION. If you know, state what kind of a character has he supported during that period?

ANSWER. I have been personally acquainted with him about nearly three years for the last time; he has supported entirely an unblemished character for a peaceable man. I know of nothing at all that would be likely to impeach him, or impeach his peace.

James Coates, sworn.

MR. LEWIS. How long have you known Mr. Hanway?

ANSWER. About four years.

QUESTION. What kind of a character has he supported during that period as a peaceable, well-disposed, orderly citizen?

ANSWER. Very good, so far as I know. A remarkably good character.

Ellis P. Irvin, affirmed.

MR. LEWIS. How long have you known Castner Hanway?

ANSWER. Four or five years.

QUESTION. What kind of character has he supported during that period?

ANSWER. Very good.

QUESTION. Where did he live?

ANSWER. He at one time carried on the mill for me, and I always considered him a very upright, quiet, simple, harmless man.

George W. Irwin, affirmed.

MR. LEWIS. How long have you known Castner Hanway?

ANSWER. I have been intimately acquainted with him for three years. I have known him five or six. He lived with me in the fall of 1849. He millered for my brother, and boarded with me that winter.

QUESTION. State what kind of character he has supported ever since you knew him?

ANSWER. A very good character; always a peaceable, quiet, innocent, good-hearted man.

MR. STEVENS. I dont know that we have proved our draft. (Taking up a map.)

MR. J. W. ASHMEAD. I have no doubt it is correct; there will be no difficulty about it.

MR. STEVENS. We close our testimony here.

JUDGE GRIER. Have the United States any thing to rebut?

MR. G. L. ASHMEAD opens the rebuttal as follows:

May it please your Honors—Gentlemen of the Jury.—It is my duty at this time gentlemen to open to you briefly the nature of the rebutting testimony in this case upon the part of the United States. In doing this I shall pursue the same course which has hitherto actuated the counsel for the government. I shall not attempt to offer any thing which I consider either irrelevant to the case or that shall bear unfairly or unjustly upon the prisoner at the bar.

The United States of America does not seek a victim in this case; it simply asks that justice shall be done, and the laws of the country faithfully and fairly administered.

One point to which I shall direct your attention in rebuttal is the character of Henry H. Kline, a witness produced upon the part of the prosecution. This witness has been stigmatized by the learned counsel who opened this cause on the part of the defence as a lying and perjured witness. It was necessary gentlemen, that this allegation should be made upon the part of the defence, because if you believe the statement of Henry H. Kline on this occasion there cannot be the slightest doubt as to the guilt of the prisoner at the bar.

They have attempted to break his testimony down; they have attempted to contradict him by witnesses as to the particular transactions; and they have endeavored to break him down by witnesses produced here, who have stated that in their opinion, his character for truth and veracity was bad. It may be proper for me, here to remark, that the testimony of Henry H. Kline in this case, does not need support. He has given to you a story, which from beginning to end is strong in itself. He has given to you a story, which has been corroborated in every particular, by all the witnesses to the transaction, who have been produced upon the part of the United States; nay more, gentlemen; he has been corroborated, as my colleagues will show you hereafter, when they speak to the evidence in the case; he has been corroborated by a majority of the very witnesses produced upon the part of the defence, who have testified to the transaction of the 11th September last. There are upon this jury, gentlemen who come from the interior of the State. They cannot very well appreciate the difficulties of the position of a police officer in a large city. In a city like Philadelphia, it is impossible for a police officer to have continued for several years in his office without raising round him, in all probability, a host of enemies. He is called upon to serve processes of various kinds against different individuals, and of course the feelings of those individuals, and the feelings of the intimate associates, and friends of those individuals, are all opposed to him, and when they have a a chance of testifying against him, they never lose the occasion offered to them; and allow me to remark to those who are unacquainted with the police of large cities, that the more faithful a police officer is, and the more boldly he discharges his duties, the greater is the number of enemies he has clustered around him. In opposition to all that has been said against Henry H. Kline, we shall show you by a large number of respectable citizens of Philadelphia; by men who have known Mr. Kline from his youth up, that he is a man of undoubted truth and veracity, and that his testimony, upon this occasion, as well as upon all other occasions, is entitled to the greatest confidence.

Another point, gentlemen, to which I shall

direct your attention in rebuttal is, as to the allegation of kidnapping, which our friends on the other side, have brought to your notice upon this occasion. It was said by them, that in January last, at the house of a man by the name of Chamberlain, kidnappers visited that house, and carried off a person into slavery.

If we are able, gentlemen, to procure the attendance of the witnesses who were present upon that occasion, and particularly if we shall be able after the shortness of the notice we have received of this matter—to procure the presence of the master of that person, we shall be able to show you that the person alleged to have been kidnapped was not a freeman, but was a slave, and was rightfully carried back to his master in the State of Maryland.

It was incumbent on the counsel for the defence to do more than they did, in regard to this allegation. They said in opening, that they would prove it a case of kidnapping, and what did they do? They simply proved that a boy had been taken away. It was their duty to have gone on, and to have shown that that boy was a free person; and not having done that, the conclusion is irresistible that they could not show it, and that therefore the case which they have alleged to be a case of kidnapping, and which they say was a justification of the conduct of Castner Hanway, was a case not such as they represented—but one in which they endeavored to resist the taking away of a fugitive from labor, from the State of Maryland. What they have neglected to do we shall endeavor to supply, and if we fail to do so, it will not be because the person taken on that occasion was not a slave, but because from the shortness of the notice it will be impossible to produce the witnesses before you. Mr. Stevens, one of the learned counsel for the defence, remarked after they had proved, as they allege, this particular case, that they need go no further, that they had proved one case and that was enough. Do you believe, gentlemen, if the learned counsel for the defence had had it in their power to prove another case even of alleged kidnapping, that they would not have done it, and we are bound to infer, that as they closed their testimony as to the single case, it was the only matter they had it in their power to produce before you; and therefore the justification of this transaction, rests upon the single case introduced by them, in which they neglected to prove that the person carried away was a free man entitled to his liberty.

We shall show you, gentlemen, because we have now the right to do so, this matter having been opened to us on the part of the defence, that about the time of the passage of the last fugitive slave law, in September, 1850, armed and organized bands of negros, paraded the streets of Lancaster, on the hunt for slave hunters, and avowing the determination that if they caught them, they would kill them. We shall show you further, that in April, 1851, Samuel Worthington, one of the most respectable citizens of Maryland, went up into the immediate vicinity of Christiana, for the purpose of arresting a colored boy belonging to him by the name of Jacob Berry. We shall show you that he was accompanied by several respectable people of Maryland—we shall show you, that when they got near the house of a man named Haines, where this negro was concealed—as they were passing a lime-kiln on the road, that a white man—because the white population in part in that neighborhood and the black, seemed colleagued to effect a common object—the resistance of the laws of the United States as to fugitive slaves—A white man hallooed, "we know who you are, we will take care of you—you are too late to do what you want." We will show you that the party proceeded on to the house of this Haines, that when they got there, they knocked at the door, and the window above was thrown open, and a negro appeared and pointed a gun at the party. He was told that if he attempted to fire that gun, he would be shot A white woman was beside this negro in the room with him, and when it was necessary for the negro to make replies to the white men, he would turn round to this white women and take his cue from her, and make reply to what was said on the outside. We shall prove that almost immediately after they arrived, this same white woman rang a large bell out of the window of that house; that immediately after the bell was rung, a horn was blown from the same house, and that immediately succeeding that, bells were heard ringing, and horns blowing, all round the country in the neighborhood of that house, obliging the party who had proceeded there for the purpose of arresting his slaves under the laws of the United States, to fly for his life, and showing that there existed at that time, to wit, in April, 1851, precisely the same kind of preconcert and combination which we allege in regard to the present transaction and showing that the opposition of the people in the neighborhood of Christiana was not to the taking away of any particular person or upon any particular occasion, but a general, long-continued determination, acted upon by signals, to prevent the execution of the laws of the United States with regard to fugitive slaves, by force and violence.

There is another point, gentlemen to which I shall direct your attention in the rebutting testimony in this case.

A witness produced for the defence by the name of Jacob Whitson has testified that in a conversation with Mr. Kline, that he (Kline) said a reward of ten thousand dollars had been offered for the apprehension of Parker, and that he (Kline) had seen Parker shoot old Mr. Gorsuch.

We will show you by the testimony of a gentleman who was present upon that occasion and whose veracity cannot be impeached, that the conversation which Jacob Whitson alleges he had with Kline, was not with Kline at all; that Kline said scarcely three words to him during the whole time he was present, but that the witness whom we shall introduce, was the party with whom the conversation was had, and that it was a totally different conversation from that stated by Jacob Whitson. We shall show you that when the tragedy at Christiana was alluded to, that this gen-

tleman whom we shall produce, made the remark to Whitson, "If it had been in my family in which this had occurred I would have offered a reward of ten thousand dollars, and should never have stopped till I had secured the offenders." A girl in the room asked the same gentleman if he would know Parker if he should see him, and he said he thought he would if he should turn out to be a slave of old Mr. Gorsuch. You will perceive that this conversation, natural in itself, likely to have occurred, and reasonable in its character, has been distorted and has been turned first from its true character, and secondly from the true person.

Again, gentlemen, the counsel for the defence have offered testimony to show you that a colored man by the name of Harvey Scott was not present at the battle at Parker's house. We shall produce Harvey Scott himself before you, and he will corroborate the statement of Kline, with whom he has had no interview and no conversation. He will tell you that he was present upon that occasion, and he will describe to you how he got out of Carr's house, and at what time he reached it when he returned.

There is another matter to which I wish to call your attention in rebuttal. Mr. Joseph C. Dickinson and Lewis Cooper, have been produced before you to state a general conversation they had with Dr. Pierce. They did not confine this merely to contradicting the particular questions which Mr. Stevens asked Dr. Pierce when upon the stand, but they went on and related general conversations they had with him. We shall show you that their conversations have been either misunderstood or misstated, and we shall show you that Dr. Pierce never intended to convey to them by what he said on either of those occasions, any thing like the meaning which they have attached to his language, and we shall show you that when they speak of Dr. Pierce's saying that Hanway had saved his life, that he did not mean by that, that Hanway had done anything to save his life from a noble or generous impulse of his nature, but that it arose simply from the fact that Castner Hanway's body was interposed between the fire of the blacks and himself, and that it was necessary for him to prevent the firing of the blacks in that direction in order not to save the life of Dr. Pierce, but his own.

Testimony has been introduced on the part of the defence to show you some impropriety in the behavior of Henry H. Kline at Christiana, at the time it was alleged he was turned out of the room by the officers. We shall show you by the testimony of persons present then, that the behavior of Kline was strictly correct—that he did nothing more than his duty as an officer and a citizen, called upon him to do, and that he was unjustly, unfairly, and violently treated upon that occasion. We shall go further in our rebutting testmony, and we shall show you that in the county of Lancaster, meetings have been held, speeches have been made, and resolutions adopted—not to sustain the laws of the United States, not to sustain the Constitution of the United States, but to sustain that higher law, which in their opinion overrides the laws and the Constitution, and enables every man according to the dictates of his own perhaps misguided and corrupted conscience, to act as he thinks proper, disregarding his obligations to the laws of his country. We shall show you particularly, that a meeting was held upon the 11th of October, 1850, in Bart township. in the county of Lancaster, and the remarks made in the Lancaster Examiner, with regard to this meeting which are very brief, are so appropriate that I shall read them to you now, as part of my remarks upon this occasion.

MR. READ. We do not wish to object to any opening on the part of the rebutting testimony, but we should like it to be confined—

MR. ASHMEAD. I have adopted it as part of my own language.

MR. READ. I wish the gentleman would speak it from memory. We have not objected, but a great portion of this we shall contend is irrelevant and improper.

JUDGE GRIER. I don't know how a matter in the Lancaster Examiner, as such, can be properly introduced as evidence. If you have remarks to make, you can make them better yourself.

MR. G. L. ASHMEAD. I will not read that then, gentlemen. I shall however, offer evidence, to prove that at that meeting the following resolutions were passed. "Resolved—"

MR. READ. I object to that. When we come to the argument, we shall object to the whole of this. It is not the proper mode in rebutting testimony to open the case again. It is proposed to read a series of resolutions which are not proved.

JUDGE GRIER. What is evidence in chief, could not be evidence by way of rebuttal What would be the very essence of the case, it is not the proper time to bring in, in rebuttal.

MR. G. L. ASHMEAD. May it please your Honors, on the part of the defence, they have offered evidence to show that the state of public feeling in that county was not opposed to the Fugitive Slave Law, and that they never did resist the execution of it in a violent and forcible manner.

MR. STEVENS. Not a word.

JUDGE GRIER. I think it has been clearly proven that they have committed a murder, what further I do not say. Of course the Counsel will not attempt to put things before the jury, under the licence of an opening speech, that which would not be received as testimony. I know it is sometimes done, but it is not fair either against or for the prisoner. I have no doubt you are stating what you are able to prove, but I doubt whether it will be evidence or not.

MR. G. L. ASHMEAD. We shall offer to prove, and I am certain I should not have offered it, unless I thought it was competent testimony, that at that meeting they resolved, that it was their duty to assist, feed, clothe and aid to escape, a fugitive slave, in direct opposition to the law passed by Congress. I have a right, gentlemen, to state to you what we think to be competent testimony in rebuttal in this cause. I exercise it in good faith. I say here nothing but what I believe under the laws of the coun-

try is strictly and fairly evidence in a case like this. I shall not indulge in any general remarks, this is not the time and place for it, they will be embraced more properly in the duties of my colleagues who are to speak to the evidence in the cause; but, I will say this to you, that when the learned counsel who opened this cause on the part of the defence, ridiculed the idea of thirty-eight negroes and three white men, levying war against the United States, he did not look upon it in its true light. It is important, gentlemen, not from the simple events of the 11th of September last, but important from the fact, that these events prove a deep seated feeling of hostility on the part of a portion of the people of Lancaster county against some of the laws of the United States, and a determination on the part of that portion of the people to oppose those laws at all risks, and at all hazards. We have seen, gentlemen of the jury, a man, who has come into this Court-room, and who, in the face of open day, before the public, in the very edifice from which the Declaration of Independence was first given to the world—that man comes forward, and states that he considers it to be loyal in a citizen to stand by and witness passively a resistance to the laws of the United States. Nay, further, that he considers it against his conscience to fight the battles of his country against its enemies. When I look at the case in connection with these matters, I am prepared to adopt the language of the learned counsel, when he said, "Blessed be God that our Union has survived this shock."

Edward G. Wood, is called and sworn.

MR. G. L. ASHMEAD. Mr. Wood, do you know the character of Henry H. Kline, for truth and veracity?

ANSWER. Yes, sir.

QUESTION. Is it good or bad?

ANSWER. Good.

QUESTION. Would you believe him on his oath?

ANSWER. Yes, sir.

QUESTION. How long have you known him?

ANSWER. Three years.

MR. STEVENS. What do you follow?

ANSWER. I am an officer.

QUESTION. Have you never heard anything against him, and that he was a pickpocket in New York?

MR. GEORGE L. ASHMEAD. I object to that question, may it please the Court.

MR. STEVENS. I am going into particulars?

MR. GEORGE L. ASHMEAD. This is a question as to truth and veracity.

JUDGE GRIER. It must be as to general character, when you cross-examine a witness. Still I suppose it leads on to show what his general character is. What do you offer?

MR. STEVENS. That where you go to support a man's character, you must ask as to his general character to show what that is; but upon cross-examination, you may ask if he has not heard something bad about or against him, and that you may descend to particulars, such I understand to be the rule of law between those who support his character, and those who impeach it. Suppose a man says, I did not hear anything against another, and I ask him whether he didn't know, he had been in the Penitentiary. Of course I leave it to your Honors?

JUDGE GRIER. I don't understand the question at all.

MR. STEVENS. That is the reason I spoke about it; knowing your Honors' attention had been called to some previous evidence.

MR. COOPER. I suppose if your Honors please, the question was not at all competent. The question proposed on the part of the prosecution was: Do you know the character of Henry H. Kline for truth and veracity, the answer was—yes.

What is that character? "Good." Would you believe him on his oath? "Yes." Then the question on the other side was, "Have you never heard anything against the character of Henry H. Kline." The answer was, "No." Then it was followed by "Didn't you hear that he was a pickpocket in New York." Surely that is not competent. The whole question that is open, is the character of the witness for truth and veracity. They assailed it on the part of the defence, and we are sustaining it on the part of the prosecution, just in the point in which it was assailed on the part of the defence, and no further. If the gentlemen had permitted us to go into general character, we should have been prepared to day to sustain him on those points in which they might assail him. But surely it is to be confined to that which they state, and whether his character for truth and veracity is good or bad. He is not prepared to defend himself against every charge against him, or any insinuation that may be thrown out against him for the purpose of effect.

JUDGE GRIER. I think Mr. Cooper is right in the way he states the matter. I believe you might in such a cross-examination cover a man with insidious charges, and by asking, didn't you hear that he committed such a murder, infer that such a thing had been publicly known. He might be loaded down with infamy if you allow such questions as that.

MR. STEVENS. It would depend upon the answer.

JUDGE GRIER. The question assumes the fact, and leaves the inference, that it exists, by asking the witness if he heard it. I merely mention the abuse that might be made of such questions. But I have no such imputations against the counsel in this case.

JUDGE KANE. I have never known such a question put, and I am aware that it has been over and over again attempted, and so far as I know, has been ruled out.

MR. COOPER. The witness answered he did not.

MR. STEVENS. If I am allowed to ask one question, I want to ask another.

MR. COOPER. You have been told you could not.

MR. STEVENS. Therefore I shall not attempt it.

James Buckley is called and sworn.

MR. G. L. ASHMEAD. Mr. Buckley, do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. I do.

QUESTION. It it good or bad?
ANSWER. Good.
QUESTION. Would you believe him on his oath?
ANSWER. I would.
QUESTION. How long have you known him?
ANSWER. Eight or nine years.
MR. STEVENS. Do you belong to the police?
ANSWER. I am the lieutenant of the police, and an officer of the criminal department, and a special officer of the Mayor.
John Hence is called and sworn.
MR. G. L. ASHMEAD. Mr. Hence, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. I do.
QUESTION. Is it good or bad?
ANSWER. Good; I consider it good.
QUESTION. Would you believe him on his oath?
ANSWER. I would.
QUESTION. How long have known him?
ANSWER. Upwards of ten years.
Not cross-examined.
Samuel Goldy is called and sworn.
MR. G. L. ASHMEAD. Mr. Goldy, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. I do, sir.
QUESTION. It is good or bad?
ANSWER. It is good, as far as I know, sir.
QUESTION. Would vou believe him on his oath?
ANSWER. I would.
QUESTION. How long have you known him sir?
ANSWER. Twelve or fifteen years.
MR. READ. Have you never heard any thing against his character?
ANSWER. I have in some respect.
QUESTION. Have you not heard it doubted?
ANSWER. Not since this trial, sir.
James Robinson is called and does not answer.
Peter Keller is called and sworn.
MR. G. L. ASHMEAD. Mr. Keller, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. I do, sir.
QUESTION. Is it good or bad, sir?
ANSWER. Good.
QUESTION. Would you believe him on his oath sir?
ANSWER. I would.
QUESTION. How long have you known him, sir?
ANSWER. Twenty-five years I suppose, we were boys together.
MR. READ. Are you not a police officer?
ANSWER. No, sir.
QUESTION. Have you been?
ANSWER. I was, under Mayor Jones, a couple of years ago.
Samuel McCahley is called and makes no answer.
Charles Worrell is called and sworn.
MR. G. L. ASHMEAD. Mr. Worrell, do you know the general good character of Henry H. Kline for truth and veracity?
ANSWER. I do.
QUESTION. Is it good or bad?
ANSWER. Well, I have had a good deal to do with that man in business, and he has always acted honestly with me.
QUESTION. Would you believe him on his oath, sir?
ANSWER. I would.
QUESTION. How long have you know him, sir?
ANSWER. Twelve or fifteen years.
QUESTION. What is your business?
ANSWER. I am an innkeeper.
QUESTION. You have known him twelve or fifteen years?
ANSWER. Yes, sir.
MR. READ. I understand you to speak of your own knowledge, have you not heard others speak of him?
ANSWER. Well, yes, I have heard others speak disadvantageously.
MR. G. L. ASHMEAD. Notwithstanding what you have heard, you would believe him on his oath?
ANSWER. Yes, sir.
QUESTION. You consider him a truthful man?
ANSWER. I do, indeed.
MR. BRENT. Did I understand you to say what his general character was, so far as you knew it, as regards truth and veracity.
ANSWER. I think he has acted always honest as far as I have known the man.
QUESTION. I want you to give his general character, not what particular individuals would say, but what the majority of them would say.
ANSWER. I have heard some speak ill against him.
QUESTION. Have you ever heard any one speak in favor of him?
ANSWER. Yes, sir.
JUDGE KANE. What is commonly thought of him as to his general character for truth and veracity?
ANSWER. I have heard him favorably spoke of, and I have heard others again say that he was a bad man.
MR. G. L. ASHMEAD. Notwithstanding all you have heard either for, or against him, do you consider him an honest man, and entitled to be believed on his oath?
ANSWER. I do, sir.
Wm. M'Daniels is called, and sworn.
MR. G. L. ASHMEAD. Mr. M'Daniels, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. I have know him for a number of years, I think I do.
QUESTION. Is it good, or bad?
ANSWER. I should suppose his character was good.
QUESTION. Would you believe him on his oath?
ANSWER. I would.
QUESTION. How long have you known him?
ANSWER. I suppose eighteen years.
MR. READ. You say, *I suppose* it is good?
ANSWER. Yes, sir; but I have heard him badly spoken of during this trial.

QUESTION. Where do you live?
ANSWER. Northern Liberties.
QUESTION. Whereabouts?
ANSWER. Fourth above Green street.
QUESTION. What is your business?
ANSWER. Tax collector.
MR. G. L. ASHMEAD. Notwithstanding what you have heard during this trial, would you believe him on his oath?
ANSWER. Yes, sir.
W. B. Rankin, called and affirmed.
MR. G. S. ASHMEAD. Mr. Rankin, do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. I have known him for a number of years, and I have never heard his character called into question.
QUESTION. Would you believe him on his oath sir?
ANSWER. I would as soon as any other man.
QUESTION. How long have you known him?
ANSWER. Fifteen or sixteen years.
MR. BRENT. What do you mean by as soon as any other man?
ANSWER. I would believe any other man whose character had not been called in question for truth and veracity, and one whose character I had never heard called in question.
QUESTION. *Then* you would not believe him as soon as any other man?
ANSWER. No, sir.
Alderman Brazier, is called and sworn.
Mr. G. L. ASHMEAD. Mr. Brazier, are you an Alderman of the city of Philadelphia?
ANSWER. Yes, sir.
QUESTION. Do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. I do.
QUESTION. Is it good or bad, sir.
ANSWER. Good.
QUESTION. Would you believe him on his oath, sir?
ANSWER. I would.
QUESTION. How long have you known him, sir?
ANSWER. Fifteen or twenty years.
Not cross-examined.
Thomas Stainroop, is called and sworn.
MR. G. L. ASHMEAD. Mr. Stainroop, do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. I do.
QUESTION. Is it good or bad, sir?
ANSWER. Good.
QUESTION. Would you believe him on his oath, sir?
ANSWER. I would.
QUESTION. How long have you known him, sir?
ASWER. From twenty-three to twenty-five years.
Not cross-examined.
John Webb is called and makes no answer.
John S. Keyser is called and sworn.
MR. G. L. ASHMEAD. Are you the Marshal of Police, for the city and county of Philadelphia?
ANSWER. Yes, sir.
QUESTION. Do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. I have never had any dealings with him.
QUESTION. That is not the question whether you have had any dealings with him, but as to general character for truth and veracity?
ANSWER. I cannot say that I know any thing against him.
QUESTION. Would you believe him on his oath?
ANSWER. I would.
QUESTION. How long have you known him?
ANSWER. Seven or eight years. There is very few men but what somebody has got something against.
MR. STEVENS. Then you have heard something against this man.
ANSWER. Yes, sir, and most every man.
John Webb is called again and makes no answer.
Jacob Weightman is called and sworn.
Mr. G. L. ASHMEAD. Mr. Weightman, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. I do.
QUESTION. Is it good or bad?
ANSWER. Good.
QUESTION. Would you believe him on his oath?
ANSWER. I would, sir.
QUESTION. How long have you known him?
ANSWER. I have known him over twelve years.
MR. READ. Where do you live?
ANSWER. No. 16, Pennsylvania Avenue. I knew him at the Alderman's office.
QUESTION. What is your business?
ANSWER. I am a bar-tender. I was carrying on business for myself at that time.
QUESTION. You knew him at the bar, and at the Alderman's office?
ANSWER. Yes, sir.
MR. CUYLER. What Alderman?
ANSWER. Alderman Brazier.
Samuel Hamilton is called and makes no answer.
John Gamble is called and sworn.
MR. G. L. ASHMEAD. Mr. Gamble, do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. I never heard it questioned.
QUESTION. Would you believe him on his oath?
ANSWER. I would, sir.
QUESTION. How long have you known him?
ANSWER. Eight or nine years.
MR. READ. Are you an officer, Mr. Gamble?
ANSWER. Yes, sir.
MR. BRENT. Are you an officer?
ANSWER. I am under-Marshal Keyser.
QUESTION. Are you one of the Police?
ANSWER. I have been, sir.
QUESTION. Are you in the city police?
ANSWER. I am, sir.
John Millward is called and sworn.
MR. G. L. ASHMEAD. Mr. Millward, do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. Yes, sir.
QUESTION. Is it good or bad, sir.
ANSWER. Good, sir.
QUESTION. Would you believe him on his oath, sir?
ANSWER. I would, sir.
QUESTION. How long have you known him, sir?
ANSWER. Seven years.
MR. READ. Where do you live Mr. Millward?
ANSWER. 57 George Street.
W. W. Weeks is called and sworn.
MR. G. L. ASHMEAD. Mr. Weeks. Do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. I do.
QUESTION. Is it good or bad, sir?
ANSWER. Good.
QUESTION. Would you believe him on his oath, sir?
ANSWER. I would.
QUESTION. How long have you known him, sir?
ANSWER. Over twenty years.
Not cross-examined.
Andrew Flick is called and sworn.
MR. G. L. ASHMEAD. Mr. Flick, do you know the general character of Henry H. Kline, for truth and veracity.
ANSWER. I do.
QUESTION. Is it good or bad, sir?
ANSWER. It is good.
QUESTION. Would you believe him on his oath, sir?
ANSWER. Yes, sir.
QUESTION. How long have you known him, sir?
ANSWER. About sixteen years I have known him, but for the last twelve, I have been intimately acquainted with him.
QUESTION. Where do you reside?
ANSWER. 51 Wood Street.
QUESTION. Were you formerly a Clerk of the Court of Quarter Sessions in this County?
ANSWER. Yes, sir.
MR. READ. What is your present business?
ANSWER. A constable.
F. M. Adams is called and sworn.
MR. G. L. ASHMEAD. Mr. Adams. Do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. I think I do, sir.
QUESTION. Is it good or bad, sir?
ANSWER. I believe it is good.
QUESTION. Would you believe him on his oath, sir?
ANSWER. I would.
QUESTION. How long have you known him, sir?
ANSWER. About six years.
QUESTION. Are you a member of the bar of the City of Philadelphia?
ANSWER. Yes, sir.
Not cross-examined.
Mr. C. B. F. O'Neill is called and sworn.
MR. G. L. ASHMEAD. Mr. O'Neill, do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. I do.
QUESTION. Is it good or bad, sir?
ANSWER. I never heard it impeached, until I saw it in the paper last evening, or the evening before.
QUESTION. Would you believe him on his oath, sir?
ANSWER. I certainly would.
QUESTION. How long have you known him, sir?
ANSWER. I have known him nineteen years this month.
QUESTION. Are you a member of the bar of this city?
ANSWER. I have been a member of the bar, sir, all that time.
Not cross-examined.
Aaron Green is called and sworn.
MR. G. L. ASHMEAD. Mr. Green do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. I do, sir.
QUESTION. Is it good or bad, sir?
ANSWER. Good.
QUESTION. Would you believe him on his oath, sir?
ANSWER. I would.
QUESTION. How long have you known him, sir?
ANSWER. In the neighborhood of seven or eight years.
James Barber is called and sworn.
MR. G. L. ASHMEAD. Mr. Barber do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. I do, sir.
QUESTION. Is it good or bad, sir?
ANSWER. I never heard it questioned till this case was brought up.
QUESTION. Would you believe him on his oath, sir?
ANSWER. I would, sir.
QUESTION. How long have you known him, sir?
ANSWER. Between six and seven years.
MR. READ. What is your business?
ANSWER. I am a constable of Lower Delaware ward.
James Brown, Sr. is called and sworn.
MR. G. L. ASHMEAD. Mr. Brown do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. I do.
QUESTION. Is it good or bad, sir?
ANSWER. Good.
QUESTION. Would you believe him on his oath, sir?
ANSWER. I would.
QUESTION. How long have you known him, sir?
ANSWER. Some five or six years.
MR. READ. You keep the Democratic Head Quarters, do you not, sir?
ANSWER. Yes, sir.
MR. G. L. ASHMEAD. Stop, that is no reproach.
WITNESS. If it is a reproach there are a great many who deserve it as well as myself.
John H. Moore is called and sworn.

MR. G. L. ASHMEAD. Mr. Moore do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. Yes, sir.

QUESTION. Would you believe him on his oath, sir?

ANSWER. I would.

QUESTION. How long have you known him, sir?

ANSWER. About twenty years.

MR. READ. What is your business?

ANSWER. A house-painter.

QUESTION. What are you now?

ANSWER. I am a police-officer.

QUESTION. You never acted?

ANSWER. No, sir.

QUESTION. Did you never go with an exhibition?

ANSWER No, sir.

Daniel Weyman is called and sworn.

MR. G. L. ASHMEAD. Mr. Weyman do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. I do, sir.

QUESTION. Is it good or bad, sir?

ANSWER. Good.

QUESTION. Would you believe him on his oath, sir?

ANSWER. I would, sir.

QUESTION. How long have you known him, sir?

ANSWER. Seventeen or eighteen years.

(No cross-examination.)

Thomas Connell is called and affirms.

MR. ASHMEAD. Mr. Connell do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. I do, sir.

QUESTION. Is it good or bad, sir?

ANSWER. Good.

QUESTION. Would you believe him on his oath, sir?

ANSWER. I would, sir.

QUESTION. How long have you known him, sir?

ANSWER. About twenty-five years.

No cross-examination.

John Martin is called and sworn.

MR. G. L. ASHMEAD. Mr. Martin do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. I do, sir.

QUESTION. Is it good or bad, sir?

ANSWER. I consider it good.

QUESTION. Would you believe nim on his oath, sir?

ANSWER. I would.

QUESTION. How long have you known him, sir?

ANSWER. About thirteen years.

MR. READ. You say you consider it good, have you not heard his character doubted?

ANSWER. I have heard a great many gentlemen's characters doubted. I say with regard to his, I have no right to believe what I hear from other people.

QUESTION. Do you speak of your personal knowledge?

ANSWER. The last couple of days I have heard persons speak about it, but never prior.

MR. CUYLER. You say you have no right to believe what other people say.

ANSWER. No, sir.

MR. BRENT. What do mean when you say, you heard him spoken of this last couple of days?

ANSWER. I have heard him in conversation call names that I do not consider proper.

QUESTION. His general character before the this trial has been good?

ANSWER. Yes, sir, it is good.

Robert L. Currey is called and sworn.

MR. G. L. ASHMEAD. Mr. Currey, do you know the general character of Henry H. Kline, for truth and veracity?

ANSWER. Yes, sir.

QUESTION. Is it good or bad?

ANSWER. Good.

QUESTION. Would you believe him on his oath?

ANSWER. I would.

QUESTION. How long have you known him?

ANSWER. Thirteen or fourteen years.

E. J. Charnley is called and sworn.

MR. G. L. ASHMEAD. Mr. Charnley, do you know the general character of Henry H. Kline, for truth and veracity?

ANSWER. I do.

QUESTION. Is it good or bad?

ANSWER. Good.

QUESTION. Would you believe him on his oath?

ANSWER. I would.

QUESTION. How long have you known him?

ANSWER. Thirteen or fourteen years.

MR. READ. What is your business, by which you earn a livelihood?

ANSWER. I am a clerk, sir.

QUESTION. Nothing else, sir?

ANSWER. No, sir.

QUESTION Nothing else at night, sir?

ANSWER. I have had some business, but I am not in it at present.

Mr. H. A. Davis is called and affirmed.

MR. G. L. ASHMEAD. Mr. Davis, do you know the general character of Henry H. Kline, for truth and veracity?

ANSWER. Yes, sir.

QUESTION. Is it good or bad?

ANSWER. Good.

QUESTION. Would you believe him on his oath?

ANSWER. I would.

QUESTION. How long have you known him?

ANSWER. From ten to twelve years.

QUESTION. Are you one of the sworn interpreters for the city and county of Philadelphia?

ANSWER. I am, sir.

MR. READ. Have you ever attended in the Court of Quarter Sessions before Judge Kelley as interpreter?

ANSWER. I have, sir.

QUESTION. Have you ever seen Henry H. Kline there as a witness, when Judge Kelley was on the bench?

ANSWER. I might have seen, I don't remember.

David L. Wilson is called and sworn.

MR. G. L. ASHMEAD. Mr. Wilson, do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. Yes, sir.
QUESTION. Is it good, or bad?
ANSWER. Good.
QUESTION. Would you believe him on his oath?
ANSWER. I would.
QUESTION. How long have you known him?
ANSWER. Between twenty and twenty-five years.
MR. LEWIS. What is your trade?
ANSWER. I am a carriage-driver. I own the carriage I drive.
MR. READ. Has Mr. Kline been a witness for you in any criminal suit?
ANSWER. Never, sir.
Jacob Dubler is called, and sworn.
MR. G. L. ASHMEAD. Mr. Dubler, do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. Yes, sir.
QUESTION. Is it good or bad?
ANSWER. Good.
QUESTION. Would you believe him on his oath?
ANSWER. Yes, sir.
QUESTION. How long have you known him?
ANSWER. Twenty years, or upwards.
Not cross-examined.
Charles Brown is called, and makes no answer.
John M'Elroy is called, and sworn.
MR. G. L. ASHMEAD. Mr. M'Elroy, do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. I do.
QUESTION Is it good or bad?
ANSWER. Good.
QUESTION Would you believe him on his oath?
ANSWER. I would.
QUESTION. How long have you known him?
ANSWER. Ten years, and upwards.
MR. READ. What is your business, Mr. M'Elroy?
ANSWER. I am a clerk, a book-keeper.
John W. Stanroop is called, and sworn.
MR. G. L. ASHMEAD. Mr. Stanroop, do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. I do, sir.
QUESTION. Is it good, or bad?
ANSWER. Good.
QUESTION. Would you believe him on his oath?
ANSWER. I would, sir, as quick as any other man.
QUESTION. How long have you known him?
ANSWER. About five years.
No cross-examination.
Egbert Sumnerdyke is called, and sworn.
MR. G. L. ASHMEAD. Mr. Sumnerdyke, do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. I do, sir.
QUESTION. Is it good or bad?
ANSWER. Good.
QUESTION. Would you believe him on his oath?
ANSWER. I would, sir.
QUESTION. How long have you known him?
ANSWER. Thirteen years.
Not cross-examined.
Nathan Lucans is called and sworn.
MR. G. L. ASHMEAD. Mr. Lucans, do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. I believe I do
QUESTION. Is it good or bad?
ANSWER. It is good.
QUESTION. Would you believe him on his oath?
ANSWER. Yes, sir.
QUESTION. How long have you known him?
ANSWER. I have known him upwards of twenty years.
Not cross-examined.
Lafayette Stainroop is called, and sworn.
MR. G. L. ASHMEAD. Mr. Stainroop, do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. I do, sir.
QUESTION. Is it good or bad?
ANSWER. Good.
QUESTION. Would you believe him on his oath?
ANSWER. I would.
QUESTION. How long have you known him?
ANSWER. From six to seven years.
Not cross-examined.
Thomas Downing is called, and sworn.
MR. G. L. ASHMEAD. Mr. Downing, do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. I do, sir.
QUESTION. Is it good or bad?
ANSWER. Good.
QUESTION. Would you believe him on his oath, sir?
ANSWER. Yes, sir.
QUESTION. How long have you known him, sir?
ANSWER. Twenty years and more.
No cross-examination.
W. D. Hazelett was called and sworn
MR. G. L. ASHMEAD. Mr. Hazelett, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. Yes, sir.
QUESTION. Is it good or bad, sir?
ANSWER. It is good.
QUESTION. Would you believe him on his oath, sir?
ANSWER. I would.
QUESTION. How long have you known him, sir?
ANSWER. I should judge some eighteen years.
No cross-examination.
Daniel D. Emerick is called and sworn.
MR. G. L. ASHMEAD. Mr. Emerick, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. I do, sir.
QUESTION. Is it good or bad, sir?
ANSWER. It is good.
QUESTION. Would you believe him on his oath, sir?
ANSWER. I would.

QUESTION. How long have you known him, sir?
ANSWER. At least ten years.
QUESTION. At least ten years?
ANSWER. Yes.
No cross-examination.
Mr. D. W. Reckafus, is called and sworn.
MR. G. L. ASHMEAD. Mr. Reckafus, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. I do.
QUESTION. Is it good or bad, sir?
ANSWER. It is good.
QUESTION. Would you believe him on his oath, sir?
ANSWER. I would assuredly.
QUESTION. How long have you known him, sir?
ANSWER. I have known him from his boyhood, but more particularly and intimately for the last five or six years.
Not cross-examined.
James Pidgeon, is called and sworn.
MR. G. L. ASHMEAD. Mr. Pidgeon, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. I do, sir.
QUESTION. Is it good or bad, sir?
ANSWER. It is good, sir.
QUESTION. Would you believe him on his oath, sir?
ANSWER. I would, sir?
QUESTION. How long have you known him, sir?
ANSWER. About ten years.
MR. READ. Do you keep tavern now, sir?
ANSWER. No, sir; I have not for many years.
Albert G. Stevens is called and sworn.
MR. G. L. ASHMEAD. Mr. Stevens, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. I do, sir.
QUESTION. Is it good or bad, sir?
ANSWER. Good as far as I know. I have never heard any thing bad about him.
QUESTION. Would you believe him on his oath, sir?
ANSWER. Yes, sir.
QUESTION. How long have you known him, sir?
ANSWER. I have known him off and on for the last ten or fifteen years, perhaps twenty; not quite so long as that, ten years at least.
Not cross-examined.
James Brown, jr,, is called and sworn.
MR. G. L ASHMEAD. Mr. Brown, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. I do, sir.
QUESTION. Is it good or bad, sir?
ANSWER. Good.
QUESTION. Would you believe him on his oath, sir?
ANSWER. I would, sir?
QUESTION. How long have you known him, sir?
ANSWER. Between five and six years.
MR. READ. You are a son of James Brown, Sr., are you not?
ANSWER. Yes, sir.
David Vicely, called and sworn.
MR. G. L. ASHMEAD. Mr. Vicely, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. I do, sir.
QUESTION. Is it good, or bad, sir?
ANSWER. It is good.
QUESTION. Would you believe him on his oath?
ANSWER. I would.
QUESTION. How long have you known him?
ANSWER. Upward of sixteen years.
Not cross-examined.
Wm. L. Gray is called and sworn.
MR. G. L. ASHMEAD. Mr. Gray, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. I do, sir.
QUESTION. Is it good or bad?
ANSWER. Good.
QUESTION. Would you believe him on his oath?
ANSWER. Yes, sir.
QUESTION. How long have you known him?
ANSWER. About eleven years.
Not cross-examined.
John Selets is called and sworn.
MR. G. L. ASHMEAD. Mr. Selets, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. I do, sir.
QUESTION. Is it good or bad?
ANSWER. Good, sir.
QUESTION. Would you believe him on his oath?
ANSWER. I would, sir.
QUESTION. How long have you known him?
ANSWER. Seven years.
Not cross-examined.
Henry Cornish is called and sworn.
MR. G. L. ASHMEAD. Mr. Cornish, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. I do, sir.
QUESTION. Is it good or bad?
ANSWER. Good.
QUESTION. Would you believe him on his oath?
ANSWER. I would, sir.
QUESTION. How long have you known him?
ANSWER. I have known him for about twelve or fifteen years.
QUESTION. Twelve or fifteen years you say?
ANSWER. Fourteen, or along there, sir.
Not cross-examined.
Samuel Babb is called and sworn.
MR. G. L. ASHMEAD. Mr. Babb, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. Yes, sir.
QUESTION. Is it good or bad?
ANSWER. Good.
QUESTION. Would you believe him on his oath?
ANSWER. Yes, sir, I would.
QUESTION. How long have you known him?
ANSWER. Between seventeen and eighteen years.

Not cross-examined.

Thos. Wallace is called and sworn.

Mr. G. L. Ashmead. Mr. Wallace, do you know the general character of Henry H. Kline, for truth and veracity?

Answer. Yes, sir.

Question. Is it good or bad?

Answer. Good.

Question. Would you believe him on his oath?

Answer. I would, sir.

Question. How long have you known him?

Answer. In the neighborhood of from 18 to 20 years.

Not cross-examined.

John C. Lamb is called and sworn.

Mr. G. L. Ashmead. Mr. Lamb, do you know the general character of Henry H. Kline, for truth and veracity?

Answer. I do.

Question. Is it good or bad?

Answer. Good.

Question. Would you believe him on his oath?

Answer. Yes, sir.

Question. How long have you known him?

Answer. Upwards of thirty years.

Not cross-examined.

Wm. Roy is called and sworn.

Mr. G. L. Ashmead. Mr. Roy, do you know the general character of Henry H. Kline, for truth and veracity?

Answer. I do.

Question. Is it good or bad?

Answer. It is good.

Question. Would you believe him on his oath?

Answer. Yes, sir.

Question. How long have you known him?

Answer. I suppose ten years.

Mr. Read. Do you keep a public house, Mr. Roy?

Answer. Yes, sir.

Joseph A. Nunes is called.

Mr. Nunes. Will your honors allow me to say, that though a member of the Bar, I was detained fifteen minutes, when there was plenty of room for us all to be seated, and there are other members of the bar who cannot get in as well.

Officer. We had no room, sir.

Judge Grier. If they are members of the Bar, of course they will be allowed to come in.

Joseph A. Nunes is sworn.

Mr. G. L. Ashmead. Mr. Nunes, do you know the general character of Henry H. Kline, for truth and veracity?

Answer. I think I do, sir.

Question. Is it good or bad?

Answer. I consider it to be be good, sir.

Question. Would you believe him on his oath, sir?

Answer. I would, sir.

Question. Are you a member of the Bar of this city, sir?

Answer. I am.

Mr. Read. Have you not heard the character of Henry H. Kline doubted and questioned?

Answer. Not until this trial, not for truth and veracity. I have heard remarks made about him but not in reference to truth and veracity.

Mr. Read. In what respect?

Mr. G. L. Ashmead. I object to any thing not connected with truth and veracity, if we had known we should be required to examine as to any other point, I will simply state that we should have had just as many witnesses prepared as on this point.

Mr. Read. Have you been present, in the Court of Quarter Sessions, before Judge Kelley, when he was called and examined as a witness?

Answer. Not that I recollect.

Question. Tax your recollection.

Answer. I think not, sir. I am not positive however, I have no recollection of it.

Joseph Abrams is called and sworn.

Mr. G. L. Ashmead. Mr. Abrams, do you know the general character of Henry H. Kline for truth and veracity?

Answer. Yes, sir, I think I do.

Question. Is it good or bad?

Answer. Generally good.

Question. Would you believe him on his oath?

Answer. Yes sir.

Mr. Read. Have you been present at the Court of Quarter Sessions at any time, before Judge Kelley. at any case in which Henry H. Kline was a witness?

Answer. No, sir.

Question. Just tax your recollection, will you, sir?

Answer. Not that I can recollect, sir

Question. What do you mean by generally good?

Answer. I mean by that what I have heard persons say.

Question. Then you have heard persons say otherwise, have you not?

Answer. Yes, sir.

Mr. G. L. Ashmead. Are you a member of the Bar of this city?

Answer. Yes, sir.

Question. And I think you say, that notwithstanding what you have heard, you would believe him on his oath?

Answer. Yes, sir.

Michael Barr is called and sworn.

Mr. G. L. Ashmead. Mr. Barr, do you know the general character of Henry H. Kline for truth and veracity?

Answer. I do.

Question. Is it good or bad?

Answer. Good.

Question. Would you believe him on his oath?

Answer. I would.

Question. How long have you known him?

Answer. Some three or four years.

Mr. Read. Where do you keep tavern, sir?

Answer. At 95 North 3rd street.

Question. In what ward, sir?

Answer. In Lower Delaware Ward.

Question. How far from Alderman Brazier's?

Answer. Two or three squares.

William W. Hankinson, called and affirmed.

Mr. G. L. Ashmead. Mr. Hankinson, do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. I do, sir.
QUESTION. You do?
ANSWER. Yes, sir.
QUESTION. Is it good or bad?
ANSWER. Good sir.
QUESTION. Would you believe him on his oath?
ANSWER. I would sir.
QUESTION. How long have you known him?
ANSWER. Upwards of 20 years.
Not cross-examined.
Charles H. Lex is called and sworn.
MR G. L. ASHMEAD. Mr. Lex, do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. I do.
QUESTION. Is it good or bad?
ANSWER. Good.
QUESTION. Would you believe him on his oath?
ANSWER. Yes, sir.
QUESTION. How long have you known him?
ANSWER. From 12 to 14 years.
Not cross-examined.
Thomas E. Connell, Jr., is called and sworn.
MR. G. L. ASHMEAD. Mr. Connell, do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. I do.
QUESTION. Is it good or bad?
ANSWER. It is good.
QUESTION. Would you believe him on his oath?
ANSWER. I would, undoubtedly.
QUESTION. How long have you known him?
ANSWER. I have known him for 6 or 7 years.
Not cross-examined.
Joseph L. Thomas, is called and sworn.
MR. G. L. ASHMEAD. Mr. Thomas, do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. Yes, sir, I believe I do.
QUESTION. Is it good or bad?
ANSWER. I believe it to be good, sir.
QUESTION. Would you believe him on his oath?
ANSWER. I would, sir.
QUESTION. Are you a member of the Bar of this city, Mr. Thomas?
ANSWER. Yes, sir.
MR. READ. Mr. Thomas, have you been in the Court of Quarter Sessions before Judge Kelley, when Mr. Kline was examined as a witness?
ANSWER. I never had the honor of being in the Court of Quarter Sessions as counsel, but I have been there as a by-stander.
QUESTION. Have you been there when he was examined as a witness.
ANSWER. I think not, sir.
QUESTION. Have you never heard of him as a witness?
ANSWER. I never heard anybody say any thing about his being a witness.
QUESTION. You never heard of his being a witness?
ANSWER. No, sir, I never heard of his being a witness in my life, sir. I will merely say that I have only heard his name mentioned as a witness in this case.
MR. READ. I only wanted to know about his general character. As a police officer I thought you might have heard of him.
William Connell is called and sworn.
MR. G. L. ASHMEAD. Mr. Connell, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. I do.
QUESTION. Is it good or bad?
ANSWER. Good.
QUESTION. Would you believe him on his oath.
ANSWER. I would undoubtedly.
QUESTION. How long have you known him?
ANSWER. I have known him about eight years.
MR. READ. What is your business, Mr. Connell?
ANSWER. I am a gas-fitter.
Joseph S. Brewster is called and sworn.
MR. G. L. ASHMEAD. Mr. Brewster, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. Yes, sir.
QUESTION. Is it good or bad?
ANSWER. Good.
QUESTION. Would you believe him on his oath?
ANSWER. I would, sir.
QUESTION. Are you a member of the Bar of this city, sir.
ANSWER. Yes, sir.
MR. READ. Mr. Brewster, have you been in the Court of Quarter Sessions before Judge Kelley when Henry H. Kline was before him as a witness.
ANSWER. I have been in the Court of Quarter Sessions many times when he was a witness, but I do not recollect whether Judge Kelley presided. I have heard him examined.
QUESTION. You have never heard any thing against his character for veracity?
ANSWER. No, sir, not against his character for veracity, until I saw this in the paper this morning.
Edgar E. Petit is called and sworn.
MR. G. L. ASHMEAD. Mr. Petit, do you know the general character of Henry H. Kline, for truth and veracity?
ANSWER. I think I do, sir.
QUESTION. Is it good or bad?
ANSWER. Good, sir.
QUESTION. Would you believe him on his oath, sir?
ANSWER. I would, undoubtedly.
QUESTION. Are you a member of the bar of this city, sir?
ANSWER. I am, sir.
No cross-examination.
William E. Lehman, Jr. is called and sworn.
MR. G. L. ASHMEAD. Mr. Lehman do you know the general character of Henry H. Kline for truth and veracity?
ANSWER. Yes, sir.
QUESTION. Is it good or bad, sir?
ANSWER. Good, sir.
QUESTION. Would you believe him on his oath, sir?
ANSWER. Yes, sir.
QUESTION. Are you a member of the bar of this city, sir?

ANSWER. Yes, sir.

Not cross-examined.

Dr. Vondersmith is called and sworn.

MR. G. L. ASHMEAD. Dr. Vondersmith, do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. I do, sir.

QUESTION. Is it good or bad?

ANSWER. Good.

QUESTION. Would you believe him on his oath, sir?

ANSWER. I would, sir.

QUESTION. How long have you known him, sir?

ANSWER. About three years.

Alderman John A. White is called and affirmed.

MR. G. L. ASHMEAD. Alderman White, do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. I think I have known him for a number of years.

QUESTION. Is it good or bad, sir?

ANSWER. Good.

QUESTION. Would you believe him on his oath, sir?

ANSWER. I would, yes sir.

QUESTION. Are you an Alderman?

ANSWER. Yes, sir.

MR. READ. In Locust ward, sir?

ANSWER. Yes, sir.

QUESTION. How far from Mr. Ingraham's?

ANSWER. About two squares.

Charles P. Buckingham is called and sworn.

MR. G. L. ASHMEAD. Mr. Buckingham do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. I do.

QUESTION. Is it good or bad, sir?

ANSWER. Good.

QUESTION. Would you believe him on his oath, sir?

ANSWER. I would.

QUESTION. How long have you known him, sir?

ANSWER. Over ten years.

Not cross-examined.

Philip Winnemore is called and sworn.

MR. G. L. ASHMEAD. Mr. Winnemore do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. I do, sir.

QUESTION. Is it good or bad, sir?

ANSWER. Good, sir.

QUESTION. Would you believe him on his oath, sir?

ANSWER. I would, sir.

QUESTION. How long have you known him, sir?

ANSWER. About eight years.

Not cross-examined.

Randolph Cottee is called and does not answer.

John C. Smith is called and sworn.

MR. G. L. ASHMEAD. Mr. Smith. Do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. Yes, sir. I think I do.

QUESTION. Is it good or bad, sir?

ANSWER. I believe it is good.

QUESTION. Would you believe him on his oath, sir?

ANSWER. Yes, sir. I would.

QUESTION. How long have you known him?

ANSWER. I have known him for five or six years.

Not cross-examined.

George Carter is called.

JUDGE GRIER. Are you going to be content with the odd trick, or are you going to have two to one?

MR. G. L. ASHMEAD. We have already gone to seventy, and they had but 29, and we have nearly as many more

JUDGE GRIER. I have no notion to interfere with you. Don't allow this to be considered as an intimation that you are overdoing the business at all. You shall do as you please. I was asking merely for information. Swear the witness. (Witness is sworn.)

MR. G. L. ASHMEAD. Mr. Carter. Do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. I have never heard a word against his character, neither privately nor publicly.

QUESTION. Would you believe him on his oath, sir?

ANSWER. I would.

QUESTION. How long have you known him?

ANSWER. Some six or eight years probably.

MR. LEWIS. Have you heard anything about it?

ANSWER. I have never heard his character called in question.

MR. G. L. ASHMEAD. We have a number of other witnesses to the same point, but we will conclude the examination of witnesses as to character for the United States, here.

JUDGE GRIER. I would suppose that two to one is as good as three, or four, or five to one; and there is no use of multiplying them.

MR. G. L. ASHMEAD. We will therefore conclude the examination upon this point, and call witnesses to testify as to other facts, sir. I will examine one more witness as to the same point that we have been examining upon.

JUDGE GRIER. Very good. As many as you please, sir.

Mr. J. P. Loughead is called and sworn.

MR. G. L. ASHMEAD. Mr. Loughead. Do you know the general character of Henry H. Kline for truth and veracity?

ANSWER. I know it in this way, sir. I never have heard his character for truth and veracity questioned, that I know of.

QUESTION. Would you believe him on his oath, sir?

ANSWER. I would, sir.

QUESTION. Were you recently Deputy District Attorney, sir?

ANSWER. I was about a year ago, sir.

QUESTION. How long did you occupy that position, sir?

ANSWER. I think about two years or eighteen months, somewhere in that neighborhood, until the District Attorney Bill passed the Legislature.

MR. READ. I suppose you are speaking of his veracity as a Police Officer?

ANSWER. I speak of his veracity generally, I don't understand the distinction.

QUESTION. Do you usually require corroborating testimony?

ANSWER. No, sir; I think I understand you now. I usually regard the testimony of Police Officers (from the nature of their business) with a little more care than the testimony of another person and not from any, (I should more properly express it) not from any distrust of the integrity of the officer, but because, as my friend Mr. Brown has frequently remarked, (I took the expression from him) they usually come with a suspicion in one eye and a bench-warrant in the other.

QUESTION. You have no doubt of his general integrity upon oath?

ANSWER. I would not hesitate to believe him, sir?

George Dyer called and sworn.

MR. G. L. ASHMEAD. There was a witness called yesterday by the name of Johnson, who said that he got his unfavorable impression of Mr. Kline's character among other persons from you, or declarations made by you. Will you be good enough to state whether that testimony be correct or not?

ANSWER. It was false, sir.

QUESTION. You never stated those things to him, did you?

ANSWER. No, sir; I never did.

Not cross-examined.

William Noble is called and sworn.

JUDGE GRIER. Do you wish the United States Attorney to state what they intend to prove, or why they offer this witness?

MR. READ. I want it understood what they offer, because it is a new part of the case, and I suppose it will not be evidence.

JUDGE GRIER. State why you offer this witness?

MR. G. L. ASHMEAD. I offer William Noble (and he is to be followed by several other witnesses to the same point) to prove that in the month of September, 1850, in the county of Lancaster, and particularly in the neighborhood of Christiana, was patrolled by armed bodies of negroes, after a report that slaveholders had come up there for slaves. That these armed bands of negroes went from house to house in that neighborhood, searching for the slaveholders, swearing vengeance against them, and expressing a determination to kill them.

I offer this testimony, may it please the Court, for the purpose of proving that, for a long period of time, there has been a regular organization for the purpose of resisting, upon every and all occasions, the execution of the laws of the United States in that neighborhood. I apprehend, may it please the Court, that this is not testimony-in-chief; even if it was, its existence was not known to the counsel on the part of the United States. But after the defence had opened to us this point we prepared to refute it in the most overwhelming manner.

I have stated to the Court briefly the nature of the evidence we are about to offer. I have stated briefly the grounds upon which we have a right to offer it, and I will leave further remarks to my colleagues on this point.

MR. READ. This is perhaps the most extraordinary offer I ever heard in rebutting testimony. It is an offer which the United States have withheld until the case of the defence has closed. They knew all this beforehand. They had their witnesses prepared. It formed an essential part of their case, because they have attempted (they did not open that they could prove) and it is particularly essential on their part to show previous combination for the purpose of proving treason, and yet they have deliberately withheld it from the Court for the express purpose of bringing it as evidence in rebuttal. Now this is not proper nor fair conduct on the part of the United States. It is their duty (and their solemn duty) to inform the prisoner of all the charges against him, or those with whom he may be connected, by which he is to be convicted of a great crime against the United States. But knowing all these facts, and having evidence of all these combinations and preparations, they have deliberately determined never to produce it as a part of their own case. Now, may it please your honors, I say that this is unprecedented. This is unprecedented. I never heard of the Commonwealth, or the United States, withholding an essential part of their case, for the express purpose of bringing it in on the rear of the defence, which the prisoner's counsel may think a full and proper one to the charge presented against them. According as I understand the rulings in this Court, if this was evidence at all, it was evidence-in-chief. It was a part of their own case, and not of the defence. Why did they examine on the stand here, with regard to previous meetings, and with regard to other anti-slavery meetings.

And did they not fail entirely in the whole of their proof? Why would it be evidence? I refer to the case of Freas and the Western Insurgents, that there had been a previous combinations of persons of the country connected with this outbreak and which showed it was a treasonable act. That is their case. Is it our case? Not at all.

Have we attempted to prove any thing of the kind? Not at all. Have we given a single iota on the subject? Not at all. We have confined our case simply and strictly to that which shows the intention of this particular individual, and showing at the same time, incidentally perhaps, what operated upon other individuals to cause them to gather upon the morning of the 11th of September. We have expressly kept our evidence within certain limits. The United States did the same thing. Your Honors, they strictly avoided the use of every name (on the examination of Henry H. Kline, with which we were prepared or supposed we were prepared,) of persons who were on the ground and identified by him at all times. The whole evidence was shorn down until one or two names were mentioned, and when we came to cross-examine, your Honors said we would not be allowed to contradict. Now they attempt to cut their case in half. One-half they present to the Court in-chief, and if they

have not had enough, then they present the other to be eaten after the dinner is over. I say that this is not fair towards the prisoner. It is doing him great injustice. It is attempting to make the principal part of the case come last, for the purpose of operating upon the jury, because it will be last heard by them. Upon general principles it is not rebutting evidence. It is evidence in-chief, and not in connection with any thing we have offered, and which we have confined particularly to the exculpation of the individual who is tried in this cause. But it may be a part of our case that there was no treason at all; but we intend to rely that whatever act was committed by any body, Castner Hanway was entirely innocent. We have shown our case in a particular way.

Well now, then, may it please your honors, there is a technical objection to this question too. The United States are bound to furnish, three days before the trial of a cause, the names of those witnesses whom they intend to examine. It is secured to us by the Act of Congress, defining treason. They have had in their pockets a list of their witnesses, and they have never furnished them to us. They have kept their case in view, and have led us to suppose those were the only witnesses on their part. They then wanted to introduce a set (all of whom we do not know) illegally, to bring in an entirely new set of facts, for the express purpose of convicting a man whom we think we have shown entirely innocent. New statements, it would not be supposed, ought not to be introduced to prove a part of the case of the prosecution by the United States, and with witnesses of whose existence we never have been informed.

Mr. G. L. Ashmead. The earnestness with which the counsel upon the other side has resisted this offer, proves most conclusively that it is a pinching part of the case. I rise, may it please the Court, for the purpose of correcting an error into which the counsel has fallen. As to a matter of fact, the counsel has said that the gentlemen who were engaged on the part of the United States had deliberately held back this evidence, when in justice and in fairness they ought to have given notice of it to the defendants in this cause. The learned counsel has entirely misapprehended my meaning, when I said that the counsel for the United States had consulted together with regard to this offer. It is perfectly evident, may it please the Court, that this consultation, or this knowledge on the part of the counsel for the United States, could not be before the commencement of the case, because if it had been so, as a matter of precaution the names of the witnesses, at all events, would have been inserted in the notice which it was requisite to serve (three days before the trial) upon the prisoner at the bar. And I will state further, may it please the Court, that the very existence of all the witnesses whom we intended to offer upon this point were not known, to any of the counsel on the part of the United States, until after the defence had opened the testimony on their part. Two of them, may it please the Court, are witnesses who have been brought here and examined on the part of the defence, whom we had no means of ascertaining, and of whose existence we did not know until after they had been produced by the defendant's counsel, in this very cause. So much, therefore, may it please the Court, for that part of the counsel's argument, founded upon the supposition that the counsel for the United States had purposely withheld this testimony. But suppose the counsel for the United States, had known of this testimony beforehand, and suppose a doubt had existed as to the admissibility or competency of this testimony, (being offered) your honors will perceive, as counsel for the prosecution, taking a merciful view as regards the prisoner at the bar, (if they had doubt upon the introduction of such testimony upon examination-in-chief) would waive it as a matter of justice and mercy towards the prisoner himself, until after they had seen whether the prisoner would open the point by his defence. And if they had done it, they then would consider we had a strict right, in all fairness, to offer the testimony in order to rebut it.

This very mercy, may it please the Court—this very mercy, which the counsel for the defence ought to praise, is made a charge of accusation against the counsel for the United States, and I apprehend that such an argument will have no weight in the determination of this question. I have stated in my previous remarks the grounds upon which we offer this testimony. I shall be followed by the learned Attorney General of Maryland, Mr. Brent, who will fully explain the ground upon which it is offered, and give the reasons why the testimony should be admitted at this stage of the proceedings.

Mr. Brent. May it please the Court—I can only say, sir, for myself, and upon my responsibility as a gentleman, and as a member of this bar, that I was not conscious that this testimony was in the power of the United States, when the evidence on the part of the prosecution closed; supposing it had came to the knowledge of some of the counsel appearing for the United States, about the conclusion of the evidence in chief, of which my friend and colleague, Mr. Ashmead, can with more confidence speak; still the Court will perceive that the United States were not in a position to use that evidence in chief. They could not call the witnesses to prove the facts, because their names were not upon the list furnished to the defendant, three days before the trial, according to the act of Congress. Hence the discovery of the testimony after the jury was empanelled, did not enable the counsel to use the witness in chief. The evidence, therefore, on the part of the prosecution closed, relying upon the *prima facie* case which was made out in the then condition of things—the manifest evidence of concert through that whole neighborhood, that notice has been sent from Philadelphia to that neighborhood, by Samuel Williams, who accompanied some of the officers employed by Mr. Gorsuch—by the fact that certain names, certainly the names of Mr. Gorsuch's slaves, were left on a piece of paper, in the neigborhood of Christiana—by the evidence

of concert in the blowing of horns — of there being responses, and an almost instantaneous assemblage of armed men, some on foot and some on horseback. We considered that, sufficient *prima facie* evidence to make it treason, and to connect the prisoner with it. The counsel for the defence had an opportunity of saying it was not, and that there was a total failure—but they go on to make a defence to this, and while putting on their defensive armor, are we to be deprived of the privilege of destroying that very defence upon which they rely—are the hands of the prosecution to be tied when they attempt to strip them of that false armor with which they have arrayed themselves. What is that defence? Why, confessing the fact that there was organization—that horns did sound to summon armed bands to the rescue—confessing that fact, they have referred the origin of that organization to lawful and legitimate motives? What is it? I take the opening statement of the counsel for the defence, where the purpose for which it was offered is given, and I will show that they offered proof for that purpose. I read the opening statement of the counsel, (reads.) The counsel then went on to detail the two cases, one only of which they have proved. After speaking of these two instances, the counsel says, "neither of these men were returned," (he reads.) Now your honors will perceive that the defence confessing this organization, refers it entirely to the exercise of a fair and natural right—that they armed themselves, and organized purely for their own protection. They have gone on, therefore, to explain the motive of this organization, and to say it was not for the purpose of resisting the law, in the reclamation of slaves, but to prevent illegal violence to those who are free. Going back to January they gave the evidence of the transactions at Mr. Chamberlain's, where they say—and we deny it, that a free man was carried into captivity. The counsel for the defence not choosing to depend upon the absence of testimony of preconcert, other than implied by the signals, and the matters which I have mentioned, have undertaken to go on and refer that organization to a certain purpose. Are we not to rebut that allegation? And if in rebutting it, we introduce evidence which might have been admissible in chief, if notice had been given, is it to be excluded? The only inquiry in regard to this rebutting proof is, whether it is strictly rebutting? Does it destroy the allegation of motive on which the defence rely? And we only offer it to rebut that, and we are entitled to it, as rebutting evidence for that purpose, and that alone. They confess the organization, and we say it dated far interior to the violence which they say gave rise to it, and that it originated as far back as September, 1850, six months before the transaction at Mr. Chamberlain's house, and that it was not for the purpose of protecting free colored persons, but for the purpose of rescuing every fugitive slave who might be seized by his master, or the agent of his master; and for the purpose of preventing the arrest of the fugitive slave, when his master or his agent came to reclaim him; and in the instance which we shall presently offer to give in evidence, that a gentleman of the highest character in the State of Maryland, coming peaceably, and armed with the process of the Court—that when he went in broad daylight peaceably and quietly to arrest his slave, the same organization was brought to bear in resistance to him as to Edward Gorsuch. We offer it to destroy the motive. Are there no principles of justice and fairness, for we hear much of them from the other side, as if some monstrous law had been laid down against this party—as if some strange course had been pursued towards this prisoner? Is there any thing of unfairness in rebutting a motive? It would be a one-sided trial, truly—to allow them to account for this organization by saying it was for a legitimate purpose, and not allow the United States to rebut it — to destroy the *quo animo?*

In regard to the technical difficulty, it does not apply to rebutting evidence—it applies only to evidence in chief. If the connsel on the other side have introduced this evidence, and we are to rebut it, this does not apply.

JUDGE GRIER. There is great difference between rebutting evidence and evidence by way of set-off, and this is an exhibition of such a case. In this way testimony could be got in, and the laws made to protect men on trial for offences that have such terrible consequences, would be evaded. Every thing tending to show there was an intention to make public resistance to a particular law, was entirely a matter of evidence-in-chief, and should have been given as such. I don't know but that the testimony itself would prove directly the contrary from what it is offered to prove—only tending to show that there was a band of runaway negroes, banded together to help each other to resist their masters, who came to reclaim them; it would not be such public resistance to the law as to be called treason. It might be a sufficient reason why the people of Lancaster county should consider it a great nuisance, and it might put the State of Pennsylvania to the necessity of refusing entrance to all colored persons hereafter. Such may be the evil meted to them in consequence of the acts they are put up to by imprudent friends. Even if this did tend to prove the fact, it would be evidence entirely in chief, not at all rebutting any thing.

JUDGE KANE. I concur with Judge Grier entirely. The two elements of the crime are the act and the preconcert. It is for the prosecution to make out both, and by omitting evidence of preconcert, they fail in their original case. The evidence which is now offered is merely to prove that preconcert. It was an indispensable element of the original case—it seems to me it cannot, therefore, be introduced as rebutting evidence. It is one of the matters going to prove the charge laid in the indictment, in regard to which the Act of Congress, if I quote it rightly, is express, that it shall only be proved by those witnesses of whom three days notice has been given to the other side.

JUDGE GRIER. We may draw a figure from the

game of whist—it would be renigging and keeping your trump back to the last trick.

Mr. J. W. Ashmead. In reference to Judge Kane's remarks, I wanted to know if I comprehended his view. It seems, according to the present view of his Honor, that there should be evidence of preconcert, we believe there is abundance of it here—yet, according to the view of the Court the other day, we were under the impression that there was none needed. We presented the evidence of preconcert, and your Honors overruled it.

Judge Kane. I meant by no means to be so understood. What I mean now, is merely this; that the evidence is now cumulative, and not rebutting. You may infer preconcert from proved facts, but when you have finished on both sides, you cannot cumulate your evidence for the prosecution.

Samuel Worthington sworn.

Mr. G. L. Ashmead. I am called upon to state for what matters, I offer this witness. Your honors have ruled out testimony, showing there were armed bands of negroes there in September 1850, and you have said such proof was accumulative, and would not be admissible at this stage of the proceeding, it properly belonging to the case upon the examination-in-chief if shown at that time to the counsel. The testimony that has just been rejected I have stated, was not known to the counsel for the United States till after the defence had opened their case, and examined a large portion of their witnesses. I have therefore given a sufficient reason why it was not offered on the examination-in-chief. I now proceed to offer testimony to a point which is perhaps, to be distinguished from the testimony which has just been rejected. The defence had offered testimony to show, that in January last, a person whom they allege to be free, was taken by a party, and carried into the State of Maryland. I offer to meet that allegation, by showing that that could not have been the foundation of the motive which actuated the defendant in this case, in the transactions of the 11th September last, by showing that at a later period, to wit, in April last, Mr. Samuel Worthington the witness, with a party from Maryland, went to the immediate neighborhood of Christiana; that they stopped there, at the house of a man named Haines, to take a slave of Mr. Worthington's who was concealed in that house, and that immediately thereupon, the same signals were given at that house, which were given at Parker's house. The first testimony we offered was as to the general state of the neighborhood near Christiana, showing the patrolling the county by armed bands of negroes; this testimony is to contradict testimony of the same character on the other side; to show that the motive which actuated the defendant was not, as they have said, of a lawful and legal character, but of a treasonable and criminal kind. It is for this reason, that it shows preconcert and combination among the defendants, who have been indicted for treason of a different character entirely from that which they allege in their behalf, that we think this testimony is admissible now.

Judge Grier. Is it to prove that the particular negro they gave evidence about was a slave, and that it was the master who went into the house.

Mr. Read. No, sir.

Judge Grier. Suppose that it was a set of kidnappers, or the master, for if the master went into the house in that way at night, he might be called and considered a kidnapper, because he did not distinguish himself from one in his conduct, and it would make no difference whether he was a kidnapper or not—and this would, be raising an issue that would be irrelevant.

Mr. Stevens. We have said nothing of the character and condition of the person taken away at Chamberlain's; we have shown that a colored person was taken away without authority. I would ask my friend from Maryland if they are giving evidence to rebut a speech of a lawyer. Do they expect us to attempt to rebut their speeches?

Mr. Brent. I never advanced any proposition so absurd, and the gentleman is indebted to his imagination for it. I read the opening speech of counsel in connection with the evidence to show its purpose.

Mr. Stevens. Then you were going to contradict the opening.

Mr. Brent. No, sir.

Mr. Cooper. I confess I misunderstood the whole thing from the beginning. I mean the offers that have been made since the examination of the witnesses in support of the character of Kline. I am perfectly sure that we cannot go back now to offer evidence that would have been evidence in-chief; perhaps I would not go to that extent, for that which might have been evidence-in-chief, and which we did not choose to exhibit in-chief, might become rebuting evidence in cases we might conceive. I suppose the whole object here was for the purpose of contradicting evidence on the other side. An attempt was made to prove that at Chamberlain's a freeman was carried off,—

Judge Grier. I don't think they have shown what his condition was, but simply that he was a negro. In using that phrase I do not mean it as offensive to any one.

Mr. Cooper. The object of the evidence was to contradict this; if there was no averment nor attempt, to prove he was a freeman, then I suppose this is not evidence. I so understood it. I know it was so opened, and I supposed that it had been followed up. I know there is latitude given to the counsel who opens, and that what he says, cannot be followed up by testimony to contradict it, unless the testimony given corresponds with the statement made. This is the apprehension I had of it, and in no other point of view could this be evidence; and if it is conceded, on their side, that there was no attempt made to prove that it was a freeman carried away—I don't see that there is an issue between us.

Mr. Brent. I will read your Honor's part of the examination-in-chief of the witness by whom these facts were proved. Page 200 of the notes, he is asked, "did you know," &c. (reads). West

is on cross-examination, (reads). Your Honor will see that this evidence was offered to show that this man was taken away and never returned—so stated in the opening speech of counsel—and as I remarked before, that though I know it is not competent to rebut the opening speech of counsel, yet, when the counsel in opening, state the purpose for which they are going to give evidence, and that a man was taken into slavery and never returned, and when they go on to say it was kidnapping in the legal meaning of the word, then I imagine, notwithstanding the wit and sarcasm displayed by one of the learned gentlemen on the other side—that when that is stated by counsel, and the witness is examined on that point, I think it is the same as if announced when the witness is offered. That transaction was in the night time—the transaction which we propose to introduce now, was in the day time—for the purpose of showing that the same organization which they admit on their side, did not apply or confine itself merely to cases of kidnapping in the night, but to cases in the day time, and where the officers of the United States went there to execute process.

JUDGE GRIER. I think it comes in the category of that which has been already rejected. I am willing to suppose that one-half of these people are runaway negroes banded together, and encouraged by white people not much better; but how is any one to judge when a man carries off a colored man at night, whether it is the master, or his agent, or an absolute kidnapper; and it is immaterial whether the man was a slave or not. You will see the view with which it was offered, and that the matters you offer do not go directly to contradict it.

MR. G. L. ASHMEAD. In the offer we have just made, we offer to show the joining together of white and black men in the same transaction.

JUDGE GRIER. It is the same. It is like what I referred to in the game of whist.

MR. G. L. ASHMEAD. Allow me to say that the offer was made with entire good faith, and we believed it to be competent testimony, and I wish that the nature of our offer as extending to whites and blacks, should be understood by the Court.

JUDGE GRIER. I dont think in this stage of the case that it makes any difference.

MR. G. L. ASHMEAD. I do not intend to read at this time, the indictments which I now wish to put in evidence, but I wish it to be understood that they are in evidence; they are the indictments of the United States vs. J. Williams and thirty-nine others, including Mr. Hanway, and the indictment against Mr. Hanway, Mr. Lewis, and Mr. Scarlett, the three white persons together, for the same offence. We wish them in evidence to affect the credibility of Elijah Lewis.

MR. READ. There is a difficulty from their supposing that these records are in this Court. They are not here, but they are certified to the next term; and at all events, I cannot see what another indictment has to do with this indictment.

JUDGE GRIER. So far as it affects the credibility of the witness, I think it is known to the jury from the admissions on both sides, that Mr. Lewis is indicted for the same offence.

MR. READ. Elijah Lewis has been indicted for the same offence; we dont deny it.

MR. G. L. ASHMEAD. We merely wished it in, in a legal way.

Gist Cockey sworn.

MR. READ. What is this witness offered for?

MR. G. L. ASHMEAD. The witness named Jacob Whitson, was introduced by the defence, who said he had a conversation with Mr. Kline, in which Mr. Kline said that a reward of ten thousand dollars had been offered for the apprehension of Parker, and further stated that Kline told him that he, Kline, had seen Parker shoot old Mr. Gorsuch. I offer this witness, who was present at that conversation, for the purpose of proving that Kline had no conversation at all with Jacob Whitson, and that this witness was himself the person who had the conversation with Whitson, which conversation differed entirely in sense and meaning from the conversation as detailed by Whitson.

MR. STEVENS. If it is to contradict the witness we have no objection.

MR. GEO. L. ASHMEAD. State whether that (Jacob Whitson) is the gentleman with whom you were in conversation with Mr. Kline?

ANSWER. Yes.

QUESTION. Where did the conversation take place?

ANSWER. At his father's house as I understood. Kline was present. It was on Sunday afternoon.

QUESTION. During that interview had Kline any conversation with Jacob Whitson?

ANSWER. I think not.

QUESTION. If he had had, would you have known it?

ANSWER. I would have heard him.

QUESTION. Had you a conversation with him yourself?

ANSWER. Yes.

QUESTION. State whether anything was said as to a reward of ten thousand dollars?

ANSWER. Not by Kline. I went to the house with Kline and three or four other gentlemen, I asked for Parker—this young man, or a young lady said he was not there; I said I understood he was and wanted to search the house. They said we could do so, and after I found they were so willing for us to search for him, I said there was no use, and we came out and some one said, go to the barn and search, and I got on the fence and was talking, and some one made the remark that there was a reward offered; I said there was, and I said that if I had been in the place of young Mr. Gorsuch, and my father was murdered I would give ten thousand dollars—he said, he has gone away, and I said I could not help that, I would find him in Canada or anywheres else.

QUESTION. Was a remark made to you about Parker, by a young lady in the room?

ANSWER. The young lady might have said something, she talked considerable; I don't remember what it was.

QUESTION. Was any thing said with regard to your knowing Parker?

ANSWER. Yes, they asked if I knew him, and

I said yes, if it was a man they called Nelson, who was Mr. Gorsuch's servant.

QUESTION. Have you stated all you recollect of that conversation?

ANSWER. I think I have, I don't recollect anything else.

QUESTION. Are you quite positive that Kline had no conversation with him?

ANSWER. I am confident he had no conversation but what I heard.

QUESTION. Did you hear any one else say any thing about the reward of ten thousand dollars, or mention Parker's name, but yourself?

ANSWER. No.

QUESTION. Did you hear any thing as to shooting old Mr. Gorsuch?

ANSWER. No, sir, only some of them asked if Parker was the man that shot Mr. Gorsuch; I can't recollect who asked it; it was not Kline. I don't know what the reply was.

QUESTION. Were you present at Christiana at the time Mr. Kline was put out of the room by the officers?

ANSWER. Yes, sir.

MR. STEVENS. We object to that.

MR. G. L. ASHMEAD. One or two of the witnesses on the part of the defence, testified that at Christiana, Mr. Kline behaved in a violent manner, and they put him out of the room.

MR. READ. It was on cross-examination, to show if the witness had any feeling or not.

MR. STEVENS. The witness Murphy proved that Kline's character was bad, and they went on to ask him if he was at Christiana when the quarrel took place in the room; and he was asked if he didn't see Jacob Albright, or somebody have a quarrel with him, and he said, he saw Jacob Albright carry him out of the room to prevent a fight.

JUDGE GRIER. If you agree to that statement, it comes under the category that we refused on their side. When they began to examine witnesses as to character, I paid no attention to it, and didn't hear it; if he was called merely to state the character of one of your witnesses, and you cross-examined for the purpose of showing his feeling of enmity towards him, you cannot bring other witnesses to contradict that.

MR. ASHMEAD. I understand that Jacob Albright was here to testify as to character.

MR. READ. He was examined to prove service of subpœna.

MR. LUDLOW. Mr. Hopkins was the man we refer to. He stated, in answer to a question made by me, that he had no difficulty with Kline at Christiana, but he saw Kline oppose Albright.

MR. BRENT. This Mr. Hopkins was put upon the stand to impeach Mr. Kline's character, and to show a feeling against Kline. He was asked if he was not present as one of the posse to make the arrests, and he said, Yes; and he was asked if Kline was not turned out of the room, and his coat torn off, and he said he saw Kline put out of the room by Albright, to prevent a fight; and he was asked, if he didn't participate with Albright in putting Kline out of the room; he denied it, and we want to show that he did assist.

MR. CUYLER. Those questions were all put on your side.

MR. BRENT. I admit it. It matters not on which side they were put; we put them to show he had a difference with Kline, and he denied having that difference. If a witness is put upon the stand to testify as to character, you can ask on cross-examination, whether he had a difference, and if he says he had not, are you bound by it? May I not bring up witnesses to say he had, and that he has stated what was not true?

JUDGE GRIER. I have often heard testimony admitted in this way, and it made a number of issues, till you forgot the case altogether, and was useless on both sides.

MR. READ. Your honors ruled out what was to us very important, on the ground that it involved collateral issues. We think the other gentlemen ought to be treated in the same way.

JUDGE GRIER. The difference here is that they say they did not offer him to contradict the witness, but to prove a fact that is *per se* evidence, to show that he had a difficulty with Kline.

MR. READ. He was asked whether Jacob Albright—not the witness himself—didn't forcibly put Kline out of the room, and tear his coat.

MR. BRENT. And whether he didn't participate in it.

MR. READ. I can't see the difference; the answer of the witness was that Jacob Albright interfered, and tore his coat, and that he took Kline out of the room to prevent his opposing Lieut. Ellis of the Marshal's police. If we are to go on in this way, we will have a hundred immaterial issues.

JUDGE KANE. There seems to be a discrepancy in the recollection of counsel as to what has been testified. If the witness to whom reference is made, did testify that he had no quarrel with Mr. Kline—that he had not been compelled to turn him out of the room because of Mr. Kline's misconduct—then it seems so me it is open on the other side to call a witness to contradict him and so prove that the first witness was prejudiced, and had a bias on his mind. But if on the other hand, what the witness swore to, was merely a dispute between another set of parties—Albright and Kline—as that would show no prejudice on his mind even if proved, the evidence proposed to be offered would be irrelevant.

MR. LUDLOW. The reason I fix the fact upon my memory is, that I went to Mr. Bacon and told him to recollect the witness.

JUDGE KANE. Put the question, Mr. Ashmead.

MR. G. L. ASHMEAD. Were you present at Christiana, at the time a difficulty took place between Kline, Albright, and others?

ANSWER. I don't know whether between Albright and others. I was there at the time of the difficulty between some of the police officers and Kline.

QUESTION. Did you see the witness examined here yesterday, named Hopkins?

ANSWER. No. I was not in the room.

QUESTION. State what took place in that room.

MR. READ. Connect Mr. Hopkins with it.

Witness turned over for cross-examination.

MR. STEVENS. Have you any violent hostility to Mr. Hanway?

ANSWER. No, sir.

QUESTION. Had you expressed yourself what would be done with him, if you could catch him in the State of Maryland?

ANSWER. I don't know that I have, sir.

QUESTION. That you would tar and feather him?

ANSWER. No, sir.

QUESTION. You are quite sure of that?

ANSWER. I don't think I have ever stated so, sir.

QUESTION. Did you ever say any thing about the members of his family, any violent matter?

ANSWER. No, sir. I don't know any thing about his family.

QUESTION. Nor Mr Lewis?

ANSWER. No, sir. I don't know either of their families.

QUESTION. And said nothing against them?

ANSWER. No, sir. Not to my recollection.

MR. LEWIS. That conversation you spoke of, was on the fence?

ANSWER. Yes. I was part of the time on the fence, and part of the time in the house.

QUESTION. You have given the conversation on the fence?

ANSWER. Part of it was.

QUESTION. What part of it was on the fence, that part about the reward?

ANSWER. Yes, sir.

QUESTION. What part was in the house?

ANSWER. I went there and asked for Parker, and they said he was not there, and I said let us search, and they said we could do so, and afterwards I said it was not worth while, as they were so willing. That was all, I think, in the house. This fence was right across the lane from the house. I was sitting on the fence.

MR. STEVENS. During all the time Kline was there, he never opened his mouth?

ANSWER. I didn't say so. I said I didn't hear Kline have any conversation with this gentleman at the time.

QUESTION. With any gentleman?

ANSWER. He may have answered some questions that I asked him.

QUESTION. Did he answer any that anybody asked him there?

ANSWER. Not to my recollection.

MR. BRENT. You were near enough to Kline to hear all he said?

ANSWER. Yes.

QUESTION. Have you recollection of his having said on that occasion that he saw Parker kill Mr. Gorsuch?

ANSWER. I did not.

QUESTION. If he had said it, could you have heard him?

ANSWER. Yes, sir.

John Bacon, sworn.

MR. G. L. ASHMEAD. Were you a neighbor of Edward Gorsuch in Baltimore county, Maryland?

ANSWER. Yes.

QUESTION. Did you at any time go up to Christiana after the occurrence of the 11th of September?

ANSWER. Yes.

QUESTION. Were you at Christiana at the time that Kline was put out of the room by the officers?

ANSWER. I was, sir.

QUESTION. Do you recollect seeing here a man examined on the stand named Hopkins?

ANSWER. I do.

QUESTION. Was he present on that occasion?

ANSWER. He was.

QUESTION. Did he assist the others in putting Kline out of the room?

ANSWER. I think he did.

QUESTION. You saw him here yesterday.

ANSWER. Yes.

QUESTION. The man who said yesterday that Kline was put out for the purpose of preventing a fight?

ANSWER. Yes, sir.

QUESTION. Was he put out for that purpose?

ANSWER. Kline came into the room with others and caught one of the criminals on the shoulder, and told him he wanted to speak to him; and Lieutenant Ellis forbid him to speak to him or move him; and Kline said, he had been there all the time and assisted in arresting them, and was there before Ellis and his posse came up, and he had as much right to speak to him as anybody. Lieutenant Ellis and others said he had not and should not, and forbid him doing so. Kline went on to sneer at him, tantalising him, that he hadn't any right there, that he was a small thing at any rate.

JUDGE GRIER. I would suggest to you, that you have examined some hundred witnesses as to character, and if we enter into this, it will be raising collateral issues. In a bushel of wheat you don't wipe every grain. I remember a case tried in that way in Dauphin county, and they took six or eight weeks. Every man in Dauphin township was examined as to character, and they run out so many new issues, that they forgot what the original issue was, that they began to try.

MR. READ. The Police force sent up there was under the direction of Mr. Ellis, and he had the control of the prisoners.

MR. G. L. ASHMEAD. If it is such a straw, I am surprised that our friends on the other side take so much trouble to get it out of the way.

MR. STEVENS. I want the witness to go on, he was telling what a small thing Kline was.

JUDGE GRIER. I thought the witness had finished. I suppose you have closed the testimony on both sides.

MR. BRENT. I am sure your Honor does not wish to curtail the inquiry, but you have not heard the material part of the transaction. They call witnesses to assail the character of Mr. Kline, and we wish to show that some of these very witnesses have participated in violent proceedings against him, and it is material before the jury. We want to show what they did to Mr. Kline, who, for doing nothing but claiming the privilege of talking to a prisoner, who I think was not under the jurisdiction of Mr. Ellis, was forcibly ejected from the room, and his coat torn from his back.

JUDGE GRIER. We decided the testimony should be admitted, and I supposed you were through, and the remark was to intimate that there was no use of raising issues on a matter that would not be thought of afterwards, it takes up time and does not a particle of good.

Harvey Scott sworn. (colored.)

MR. READ. What is proposed to be proved by this witness?

MR. G. L. ASHMEAD. We offer to prove that the testimony given on the part of the defence, by Carr and others, the alibi, is not correct, that this witness was on the ground, and I wish him to explain how he got out of the room and proceeded to the scene of action.

MR. READ. Our objection is this. I do not want to bind anybody to the opening speech—but it was said he was an actor in, and saw the transaction of the morning of the 11th of September; if he is to prove any thing that took place there, it is evidence in chief, and it is what the United States should have done in the first place.

MR. ASHMEAD. We do not offer him for that—but to prove he was there.

JUDGE GRIER. If you bring a witness to contradict Kline as to Harvey Scott's being there, they have a right to show that he was there.

MR. GEO. L. ASHMEAD. Were you at the battle on the morning of the 11th of Sept. last?

ANSWER. I gave my evidence that I was there once. I was frightened at the time I was taken up, and I said I was there, but I was not.

QUESTION. Were you there on the morning of the 11th of Sept. last?

ANSWER. I was proved to be there, but I was not there.

QUESTION. On the morning of the 11th of Sept. last?

ANSWER. No, sir—Kline swore I was there, and at the time I was taken up, I told the man I was not there, and they took me to Christiana, and I was frightened, and I didn't know what to say, and I said what they told me.

MR. GEO. L. ASHMEAD. I had a conversation with this witness three or four days ago, and he said he was there.

JUDGE GRIER. Yes, others have had a conversation later than you.

MR. GEO. L. ASHMEAD. Do you understand my question when I ask you whether, on the morning of the 11th of Sept. last, at Parker's house, you were present and saw what occurred?

ANSWER. That was what I said.

QUESTION. Did you state that to me two or three days ago?

JUDGE GRIER. Do you say so now?

ANSWER. No, sir.

QUESTION. Have you had conversation with any one, since you conversed with me?

ANSWER. No, sir.

MR. JOHN W. ASHMEAD. In a case of this character, I think I have a public duty to perform. I was present at his examination before the Commissioner of the United States, and he swore he was there, and detailed all the transactions that occurred. And he was examined on another occasion here, in the case of Williams, and he swore positively he was there; and having deliberately testified to that matter on two occasions, I feel bound in justice to the Government and to the public, to ask that he may be now committed to take his trial for perjury?

MR. READ. I do not wish to interfere with justice, but here is a poor negro with a weak mind who was entrapped into saying what was untrue, and I think it is taking advantage of him under the circumstances; I think this should not be done now. I think it could be proved that he is not a man who is hardly responsible for his acts.

MR. J. W. ASHMEAD. I am willing that he should be kept in custody to-day.

JUDGE GRIER. Poor devil, it is not worth while for the United States to do it. Let him go, and if you owe him any thing, pay him, that he may not be tempted to steal.

MR. STEVENS. The truth is, that he is not right in his mind.

MR. J. W. ASHMEAD. With that explanation I am perfectly willing he should depart.

Court adjourned till Friday, December 5th, 1851, at 10 A. M.

Philadelphia, Friday, December 5th, 1851.

THE COURT OPENED AT TEN A. M.

PRESENT, JUDGES GRIER AND KANE.

Jurors all present.

JUDGE GRIER. Have the United States any more testimony? I would wish to remark, I have no doubt that every one has a desire to hear this cause, but we must insist, that no one shall show his approbation by attempting to clap or laugh. I felt much mortified that any one should be found exhibiting such conduct as was evinced last night. It was disgraceful to human nature. A poor wretched negro has been committing perjury, (he has sworn twice one way and once another,) and I say it is disgraceful that any person should be found so base in their opinions as to clap their hands in exultation; it is a taste which should not be encouraged, and I should find little difficulty in punishing it very severely. The testimony of that person did not affect this cause a straw, and it was on that account I mentioned it. If any person in the crowd does such a thing and we cannot distinguish him, we shall have to put them all out.

MR. STEVENS. I wish to say this. Your honor said he had been twice sworn the other way, and then came into Court to commit perjury.

JUDGE GRIER. I think it is pretty plain, and I do not offer any explanation to you. I carefully intended it to have no bearing upon this case.

MR. STEVENS. The remarks might be understood as reflecting upon the defence.

JUDGE GRIER. It was not.

MR. ASHMEAD. He swore three times, once at Christiana, once at Lancaster, and once in

Williams' case.—May it please the Court, there is a witness I shall have occasion to use on the part of the United States, whose testimony cannot be received in this case now, under the ruling of this Court; it being cumulative in its character. As he is of very great importance, I ask we may have an order to commit him, so that he may be detained as a witness. His name is Charles Milford; he is a colored man.

JUDGE KANE. Your order is in default of bail, or absolutely?

MR. ASHMEAD. I would rather detain any how.

MR. D. P. BROWN. I did not understand the application exactly of Mr. Ashmead, but sufficient of it to understand that it was in relation to some case not on trial; and as I am counsel for almost all the other prisoners, I think it should be stated in a manner so that those might hear it who feel interested in it.

MR. ASHMEAD. I have stated that there is a witness by the name of Charles Milford, for whom I ask the Court for an order that he may be committed as a witness. It is a right I have by Act of Congress, and it has never been questioned, therefore I did not make it public.

MR. BROWN. So far as regards ourselves I have no interest in it certainly, but I want to know whether he is one of those whose names have been given us on representing the defence?

MR. ASHMEAD. I will state it is not one of the names, and for the information of the gentleman, I will further state that there will be a new list of names made out and served to the counsel. It was not known to us until this morning.

MR. BROWN. Which service will be accepted, subject to protest.

Alderman Reigant is called.

MR. G. L. ASHMEAD. If your Honors please, where a party has been deceived by a witness, it is a right he has to show that he has been thus deceived. On the part of the United States, we have stated to the Court that this witness has deceived us by the character of his testimony. I wish to show, as I think we have a right to show, that on the examination of this witness at Christiana, upon his examination at Lancaster, and upon his examination in this city, upon his oath, he has told the story that he was on the battle ground at Christiana. He has told it in a straight-forward way, and he has never contradicted it until he was brought upon the stand yesterday, and further that no one has conversed with him since I saw him about three days ago. That yesterday in the Marshal's office, he was conversed with, by several negroes, who were required to be sent away from him. I wish to show that but three days since, when I saw him at the prison, in the conversation I had with him, he told me precisely the same story, that he had told me upon the three previous examinations. We think that we have a right to show these things, and that we ought to show in justification for having offered him as a witness in this cause.

MR. READ. I think, may it please your honors, that this is not the regular mode of offering rebutting testimony. This witness, if a witness for the prosecution, was a witness-in-chief. I am not stating he would not be a witness in the purpose for which he was presented, but that he was a witness-in-chief, if he was on the ground and saw the circumstances which took place.

If the United States had done what they are always bound to do, if they believed and trusted their witness, to put him on the stand, even if they did not choose to examine him, he is their witness and produced by them. That is the usual course of proceeding as a matter of justice and propriety towards the prisoner. If they will not put him on the stand, they begin by discrediting him themselves, and when they offer him as to a single fact, they are to take their chance whether he is or is not to be believed. This witness was produced for a single purpose, and it was to prove he was on the ground, and that Mr. Kline had sworn correctly. Now, I understand, that not having chosen to produce him in-chief, but having been overwhelmed by the testimony on the part of the defence, that he never was there, the object is to introduce what he has sworn on former occasions to go in evidence before this court, and what he has never said when he spoke the truth. Now, are we to have at this stage of the cause, all the irrelevant matters brought before the jury and the court for the purpose of affecting the life of the prisoner? May it please your Honors, I think it is not the course of procedure a dignified body like the United States should pursue toward a poor inoffensive miller of Lancaster county. They had the power and right to go over the whole of Lancaster county, and they have brought individuals from all portions of the country; they have been satisfied with the testimony, and they do not dare to put this man upon the stand, and endure a cross-examination; I say that under these circumstances it is not for them to prove what he has said upon former occasions. It is not for Mr. Ashmead to be his father confessor, and come here to prove what he said in the solitary prison, or in the solitary office. This is not the mode, though there can be no doubt he has sworn first to one thing and then to another. We do not impute to the United States, what we shall impute to another quarter. We know the gentlemen of the United States would not descend to make this person tell a falsehood; but there is a portion of the cause which may come when there may be other parties upon whom may be fixed the cruelty of having committed this perjury in the first instance. In the first place, it was at Christiana and Lancaster, and upon other examinations, if on oath, but the perjury was upon the stand. We know them to be the facts, and we had other evidence to show all these things so clearly that no one could doubt that this man was frightened to be a witness in this cause.

And he is prostrated here, because he happens to be a poor, miserable negro. Now I do object at this state of the cause, when we supposed that no one but Dr. Pierce was to be examined, and when we had understood we had closed the case, to examine this man who has not the moral force to say what he pleases.

Mr. Cooper. I desire to submit a single remark. I care very little about this matter of Harvey Scott. I think it was put upon a correct footing by the Court, although I think it perfectly competent to show that the enemy have ploughed with our heifer. And, if my colleagues are agreed, I am perfectly willing. I will merely state that this negro is not so shallow-minded, he is a man that can tell a straight-forward tale. And it was not through fear. I am perfectly willing to do justice to the counsel on the part of the prisoner, in all sincerity, and to concede to them what they were willing to do with the United States. I know that they had no hand in doing what has been done, but there is enough in the evidence plain to the eyes, to show how this thing may have been done. We see a crowd of men, slick, well-clad, and in uniform, by the kindness of some persons. These are the persons accused. Here comes in a poor witness, ragged, dirty, and filthy, so that it is perfectly evident there was a different degree of care manifested to a certain class, more than there was manifested to another class.

Mr. Stevens. It is not possible to my weak perceptions, to see the propriety or dignity of this course of proceeding in a trial for high treason. The United States, (no, sir) the State of Maryland rises here, and through one of the honored citizens of Pennsylvania, imputes to the defence, tampering with their witnesses, who had been kept separate from the defence in this cause, even the colored individual, and to whom we have no access. For he was committed merely as a witness, and our people had (and could have) no intercourse with him. And thus it seemed a reproach to us, charging us with tampering with a witness for the United States. That we have not approached him, and fed and clothed him, and bribed him through our kindness, to become a perjured witness.

I do not understand the consistency or justice in these imputations. I had hoped nothing of this kind would be done in this Court. But when such charges are made, it is our duty to refute them. It is not proved that we have spoken to him. I have no objection they should have given this man. If they believed he was at Christiana, it was their duty to the client and prosecution to have produced him as a witness-in-chief, to prove the fact and not have left that fact upon the rotten testimony of a single witness. Why did they not produce him? Why keep him back to the last moment? I would say, they distrusted his testimony, but they knew what had been proved about him, on his examination before. More witnesses can be produced yet in their discretion; they saw fit to produce him; and to perjure himself to support Kline, was damning their own cause, in the estimation of every honest man, and they prudently withheld him. But when Kline's testimony had been crushed to the earth, they seemed to be goaded to frantic madness, and they brought him to fill up their case. He knew, (because what we have sworn and proved unquestionably to be true,) they are to prove, that on a former occasion he perjured himself, under the care of Alderman Reigart and Kline. I am contending that this course is necessary for us to pursue. I hope we shall hereafter confine ourselves to the evidence in the cause. I shall do so as far as I can, unless I am compelled to repel the imputations which seem to be cast upon us.

Mr. Geo. L. Ashmead. My colleagues have already said, that if the other side objected to this evidence, we will withdraw the witness, and we have already offered to do so.

Dr Pierce is re-called.

Mr. Brent. You have stated you expressed the opinion, that if in consequence of Hanway's turning back and saying something to the negroes, it may have saved your life. Will you state all the opinions you expressed on that subject, and the whole of the opinions you expressed at the time, and explain the opinions you gave, and what you meant to give?

Mr. Stevens. He is called upon to state as to what he meant. It is going over the same ground; I would suggest, it is not the proper way.

Mr. Brent. Well, what did he give?

Judge Grier. I understand that the Dr. was examined that he might make an explanation for the purpose of giving testimony on a particular point. It is not usual to bring a witness back to go over the same ground again, and to repeat what was said before. And if it were the case, I do not know who would have a right to the last repetition.

Mr. Brent. Something has been said about Mr. Kline's being a coward; I want to ask what Mr. Kline's conduct was.

Answer. I conceive Mr. Kline's conduct—

Mr. Stevens. Wait a moment. I object to it. If he tells what he did, I have no objection.

Mr. Brent. State whether he acted as a cool, collected man.

Answer. I think he acted with marked determination and vigor throughout the whole affair.

Question. Dr. Patterson has stated that you expressed an opinion, that Kline had acted as a coward.

Mr. Stevens. I object to it, this is not the proper way.

Mr. Brent. I have a right to contradict Mr. Paterson.

Mr. Stevens. Then I will call Dr, Patterson again.

Judge Grier. It is precisely like a game of whist, that I have alluded to before.

Mr. Brent. It is stated in your evidence, page 129, that in answer to the question, Did he run from or towards the house? you answered—He was running from the house. I want to know if that is correct or not?

Answer. No, sir. I saw him running towards the house.

Mr. Dickinson Gorsuch is recalled.

Mr. Brent. It is stated you testified to having seen but one of your father's slaves—on page 145 in testimony—

Question. Did you see any slaves of Edward Gorsuch there?

Answer. I saw one.

Question. What was his name?

Answer. His name was Noah

QUESTION. Noah what?

ANSWER. They call him Noah Buley."

I want to know if that is the case or not?

ANSWER. I saw two. Noah and Joseph.

MR. G. L. ASHMEAD. May it please your honors, we close the rebutting testimony on the part of the United States.

MR. STEVENS. The testimony is closed if your honors please.

JUDGE GRIER. Are the counsel for the United United States prepared?

MR. LUDLOW. Yes, sir.

JUDGE GRIER. What is the arrangement about the speakers?

MR. ASHMEAD. I understood that three speeches should be made on each side, and we have adapted ourselves exactly to this arrangement.

JUDGE GRIER. As this is the first case of the kind, and as it is one of high importance, involving the life and death of this man, I have sat down, and so continue, with the determination to give the utmost limit that shall be required on both sides, and though it is unusual to hear more than two, I am willing to hear three, if that is the order you have arranged among yourselves.

MR. G. L. ASHMEAD. That is the arrangement we have come to between the parties.

MR. JAMES R. LUDLOW then commenced to sum up for the prosecution as follows:

With submission to the Court, Gentlemen of the Jury. We now proceed on the part of the Government to sum up the evidence which has been produced in this cause, and by a careful analysis of it, to show (we think to your satisfaction,) that the prisoner at the bar is guilty in the manner and form in which he stands indicted. My learned friend, the District Attorney, in his opening, told you, he came not here to seek or demand innocent blood. With that remark, may it please your Honors, I most heartily concur. The Government of the United States, whose representatives we are this day, is by far too benevolent, to descend to so mean a position. The foundation of this prosecution, is the Constitution, its support, the law of the land. We appeal therefore, gentlemen, to the law and to the evidence, and if they be not with us, and for us, acquit the prisoner. In order that you may distinctly understand the law, and be enabled in a measure, to wind through the labyrinth of evidence produced in this cause, we shall direct your attention to certain distinct propositions, and we hope thereby to be enabled to make the matter more plain, and that you will be assisted in arriving at what I myself, may say, is the great object of all judicial investigations, to wit: the truth. In the first place, may it please your Honors, I shall review the evidence which has been submitted in this cause, and show that the lamentable occurrences, which disgraced the State of Pennsylvania upon the 11th of September last, constitute the crime of treason, and that this prisoner at the bar, was a guilty participant in that crime. Allow me to call your attention to a short history of the facts, in their chronological order. This tragedy opens on the 10th of September, by the arrival of one Williams, at Christiana.

He brings with him intelligence which is to affect, and which does ultimately affect the peace of the community, in the death of an unoffending man. About the time (you will notice these facts particularly) about the time that this man Williams arrived at Christiana, certain gentlemen from the State of Maryland in pursuit of a lawful calling, were proceeding to a house situated in a valley, for the purpose of claiming fugitives from labor. They are startled as they proceed, by various sounds of horns, bugles, and other instruments. A legitimate result, may it please your honors, and gentlemen, of the news which had the previous day been brought into the County. They arrived at the scene of action, the sounds are repeated, this communication from house to house, from farm to farm, and valley to valley, is there renewed, and what do they meet? An infuriated, lawless, determined band of negroes assembled together, as we will next show you for the express purpose of rescuing the slaves of Mr. Gorsuch, and of defying the authority of the officers under the law, so that when the Marshal proceeds to read to them the warrants, the authority with which he was clothed, as an officer of the law; they resist.

But, mark! they are beginning to feel that perhaps there is something wrong here. They ask for time to consider, and were about (as the evidence will prove to you) giving up, when the prisoner at the bar, whom we charge to be (as we think we can show it) the leader in the conspiracy, makes his appearance. Instantly the scene is changed, they take courage and rush down the lane, and the result is, they murder a man in cold blood. After they rescue the slaves, for which that man came, they proceed to the other acts of violence which have been narrated from the witness stand. But Hanway, having once joined that assembly of men, acts, as I shall hereafter show, acts as it is supposed he would have acted, had he occupied the position we have assigned him. He distinctly, positively, and repeatedly, refuses to assist the officer. It is an illegal act. In addition to that, (and I am now taking simply the evidence from the prosecution, because I shall notice the evidence for the defence more fully hereafter,) he makes certain exclamations that the law he would not read, he did not care for that law or any other Act of Congress, and moving his horse in the direction of the conspirators, what does he do? He whispers to them those important words which shall never be known, but the effect of which was a bloody onslaught upon every white man upon the ground, except the prisoner and his friend Lewis.

Now, after this brief narrative, may it please your Honors, what is the law on this subject? It has been fully commented upon by my friend the District Attorney in his opening, but it is necessary for me to introduce it again here, and your Honors will therefore, I hope, allow me to go on to the Constitution of the United States, Article 3d, Section 3d, which reads as follows:

"Treason against the United States shall consist

only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court."

The term "levying war" is that particular term which we are to explain, and endeavor to arrive at the legal signification of As has been remarked, this is the express language of the Statute twenty-five, Edward Third, chapter second. The words "levying war," are used in our Constitution as they are there used.

It is needless for me now to say that that is the opinion of all the judges, and I will not occupy the time of your Honors to show that Judges Peters and Chase, and Chief Justice Mar shall, have all agreed that the term as stated in the Constitution is taken from the English act. But we have heard here of the English law, and if I mistake not, my learned friend on the other side said that such Judges as Scroggs and Jeffreys have lived. But where will he stand when I show him the interpretation we shall insist upon, is put upon it by such men as Hale, Foster, and Mansfield. Sir, you could not bring to the notice of posterity, men who would more glory in all that is pure and holy, and I may say, men possessed of more dignity and nobleness of character, than the judges whose names I have quoted. Sir, that term levying war and the explanation of it, is attributable entirely to their decisions. And if, sir, there was blood and bloody deeds, and judges who were willing to lend themselves to all the transactions of that most dishonorable period of English history, there are others, sir, whom they will not, I am persuaded, dare to attack. Well, sirs, what is the English law upon this subject? I will read it to your Honors, and give you the authorities.

The uniform and undivided language of the Court is, that

"If divers persons levy a force of multitude of men to pull down a particular inclosure, this is not a levying of war within this statute, but a great riot; but if they levy war to pull down all inclosures, or to expulse strangers, or to remove counsellors, or against any statute, as namely the statute of *Labonrers*, or for inhansing salaries and wages, this is a levying war against the king, because it is generally against the king's laws." 1 Hale, 132.

See also, Foster, 219; Damaree's Case, 8 St. Trials, 218; 15 Howell, 521; Purchase's Case, 8 St. Trials, 267; 15 Howell, 651; 4 Bk. Com. 82; Lord George Gordon, 21 Howell, 485.

In this connection I may also remark in answer to the case of Lord George Gordon, which was quoted on the other side in the opening of my friend, that in that case, Lord George Gordon was acquitted because the jury did not believe the evidence, or because the evidence was not sufficient to convict him.

At the same time may it please your Honors, Lord Mansfield distinctly lays down the doctrine which I have quoted from my notes. And if your Honors will take the trouble to examine that case fully, you will find it sustains the law as laid down by other Judges and the United States Court. But upon the law decided by the tribunals in this country I have something to say. Judge Patterson in the trial of Mitchell, (the United States against Mitchell, one of the Western Insurgents,) says,

"The first question to be considered is, what was the general object of the insurrection? If its object was to suppress the excise offices and to prevent the execution of an act of Congress, by force and intimidation, the offence in legal estimation is high treason; it is an usurpation of the authority of government; it is high treason by levying of war."

It is positive, distinct, there can be no doubt about the question, and it is an usurpation of the authority of the government, it is high treason by levying of war

Again, Judge Iredell, in Wharton's State Trials, page 480, says,

"I am warranted in saying, that if, in the case of the insurgents who may come under your consideration, the intention was to prevent by force of arms the execution of any act of the Congress of the United States altogether (as for instance the land tax act, the object of their opposition), any forcible opposition calculated to carry that intention into effect, was a levying of war against the United States, and of course an act of treason."

And then again he says, (and to this point I must request the special attention of your Honors,)

"The particular motive must, however, be the sole ingredient in the case, for if combined with a general view to obstruct the execution of the act, the offence must be deemed treason."

Judge Peters, sir, in a case which I also quote from, (in Wharton's State Trials, page 584,) remarks,

"Though punishments are designated, by particular laws, for certain *inferior* crimes, which, if prosecuted as substantive offences, and the sole object of the prosecution, are exclusively liable to the penalties directed by those laws, yet, when committed with treasonable ingredients, these crimes become only circumstances or overt acts. The intent is the gist of the inquiry in a charge of treason; and is the great and leading object in trials for this crime."

Judge Iredell also in Fries case, Wharton's State Trials, 591, confirms the views I have already quoted. Judge Chase, in Fries' case, Wharton's State Trials, 634 & 5, uses this language, which was quoted with approbation by Chief Justice Marshal on the trial of Aaron Burr.

"It is the opinion of the court, that any insurrection or rising of any body of the people, within the United States, to attain or effect by force or violence any object of a great public nature, or of public and general (or national) concern, is a levying of war against the United States, within the contemplation and construction of the Constitution."

It is not necessary for me to read further from that opinion, for it is a mere repetition of the law as previously decided. You will, therefore, perceive, may it please your Honors, that upon the facts as we have them in proof here, the whole transaction is to be looked upon as a violation of the Act of Congress—as a violation of the Constitution, and therefore if we can join Hanway with these guilty participants in

the outrages as they were committed there, we have proved the overt act which is necessary to constitute the crime of treason. And, that having shown that these negroes were aware of the Act of Congress, and of the presence of an officer to execute the Act, and in spite of it all, proceeded to resist the law—taken in connection with the remarks of the defendant as detailed by Kline, and that this went beyond a mere personal rescue, for they had actually rescued the slaves before the attack was made—the slaves were safe and gone, and the Gorsuch's were leaving the ground—taking the whole transaction together, it shows that according to the law, this man Hanway, if guilty at all, is guilty by virtue of his presence upon the ground and joining with the conspirators—the whole transaction being the overt act. In order further to enforce this view of the law, I will remark, that in treason there are no accessories, and therefore if this prisoner at the bar was present as I have stated, he must be guilty by virtue of his presence.—if we can show a proper combination which is always to be judged by the facts—if he was present, he must be a principal. I read from 2 Burr's Trial, 404, in which Chief Justice Marshall says,

"It is not deemed necessary to trace the doctrine, that in treason all are principals, to its source. Its origin is most probably stated correctly by judge Tucker in a work, the merit of which is with pleasure acknowledged. But if a spurious doctrine have been introduced into the common law, and have for centuries been admitted as genuine, it would require great hardihood in a judge to reject it. Accordingly, we find those of the English jurists who, seem to disapprove the principle, declaring that it is now too firmly settled to be shaken."

Judge Chase, in Wharton's State Trials, p. 636, (and I should have quoted this first,) says,

"In treason, all the *participes criminis* are principals; there are no accessaries to this crime. Every act, which, in the case of *felony*, would render a man an accessary, will, in the case of *treason*, make him a *principal*."

But the intent, which is after all the great object for which we are searching in this cause, the intent as I have before said, can be proved by a single witness, and be deduced from the facts as they occur. To this point I quote Judge Chase, Wh. St. Tr. 636, in which he says,

"If any man *joins and acts* with an assembly of people, his intent is always to be considered and adjudged to be the same as theirs; and the law, in this case, judgeth of the *intent* by the FACT."

Judge Peters, Wh. St. Tr. 585–6, advances the same doctrine and also his Honor, the district judge, in his charge to the Grand Jury—that the intent may be proved by a single witness.

It may be further advanced that inasmuch as Hanway was not armed, he was not guilty. It is perfectly well settled that arms are not necessary. Treason may be committed where there is not the presence of a single armed man. This is the law, and I can show it. I again quote from Wharton, page 634, showing clearly that military weapons are not necessary.

"The court are of opinion, that military weapons (as guns and swords, mentioned in the indictment) are not necessary to make such insurrection or rising amount to a levying war, because numbers may supply the want of military weapons, and other instruments may effect the intended mischief. The legal guilt of levying war may be incurred without the use of military weapons or military array."

This opinion of Judge Chase, is sustained in 1 Paine, 271; in 2 Burr's Trial, 414. Chief Justice Marshall quotes the opinion of Judge Chase, and sustains it to the letter. It may be alleged that Judge Chase was impeached, and that his opinions are of little weight. Whatever may have been the grounds of that impeachment, it is not for us to discuss, but when I show that his opinions have been sanctioned by Chief Justice Marshall, I am sure my learned friends on the other side will require me to go no further. Judge Marshall also adds further weight to this doctrine, when on page 411, 2 Burr, he remarks,

"Judge Foster, in his valuable treatise on treason, states the opinion which has been quoted from Lord Hale, and differs from that writer so far as the latter might seem to require swords, drums, colors, &c., which he terms the pomp and pageantry of war, as essential circumstances to constitute the fact of levying war. In the cases of Damaree and Purchase, he says 'the want of those circumstances weighed nothing with the court although the prisoner's counsel insisted much on that matter.'"

But it may be said that this man Hanway, had little or nothing to do with this transaction. In 4 Cranch 126, Chief Justice Marshall, again says,

"If war be actually levied, that is, if a body of men, be actually assembled for the purpose of effecting by force a treasonable object, all those who perform any part, however minute, or however remote, from the scene of action, and who are actually leagued in the general conspiracy, are equally traitors."

I have thus may it please your Honors, rapidly passed over what may be considered to be the law of this case. I omitted to quote the opinion, as to what amounted to levying of war, of Judge Story, which has already been read by Mr. Ashmead in his opening—and to refer to the opinion of his Honor, the district judge, sustaining these general views of what is levying war. But there is one single solitary case, that is to destroy all the law on the subject for the last hundred years—and that case, is the United States vs. Hoxie, so eloquently commented upon by my learned friend in his opening for the defence. In that case if you will examine it, you will perceive that the sole object and intent—and so avowed and expressed—of the party who went to seize the raft, was to steal it away. So much for that. But suppose it is law, which I doubt and deny—it is the only solitary exception to all the cases upon the subject.

But I may here notice, what perhaps was intended to weigh with the jury—that this man Hanway—the miller in his shirt sleeves, and with the felt hat on, intended to levy war against the United States. Sir, it struck me painfully—ridiculous as the description seemed—it struck me painfully, when I remembered, that within a few

feet of that same miller, lay a man—dead—and within six hundred yards of him was another, riddled with shot, and sir, in addition to that—if the evidence for the prosecution is to be believed—that *that* man had instigated these blacks to do these deeds of horror. You need not tell me, that to lead a set of conspirators, you are to be armed and arrayed in all the panoply of war. It is not law nor fact. Their general left them when his own life was in danger, but he commanded them as efficiently while upon the ground; they knew him in his every day dress.

I will now proceed to comment upon the evidence; and in the first place, Gentlemen of the Jury, I shall attempt to prove that by the ordinary principles of our nature, this man must either be innocent, or guilty, and that he would have exhibited that innocence or guilt upon the spot. Now, may it please your Honors, what is the conduct of a man when he is enraged? He acts it; when afraid, he shows it; when ashamed, he will blush; if innocent, it will appear; if guilty, he will also enable you to read it in his movements. This man, therefore, is either innocent or guilty. If he is the innocent, injured man which it is said he is, what would have been his conduct when he arrived upon that ground? govern it by the ordinary principles of our nature. Suddenly he sees the assembled band of infuriated men; he has accidentally, you may say, or for the purposes of justice, which makes it the worse for him, appeared there. He would either have left the spot, or he would have made strenuous and decided efforts to restrain the negroes. Does he leave the spot? No, sir. Does he restrain the negroes? Take the evidence for the defence in its fullest latitude, and you will perceive he raised the feeble cry, "Don't shoot, for God's sake don't shoot!" and there it ended. Is that consistent with innocence? Again it may be said, he came there for the purposes of justice. What would have been the conduct of an innocent man under such circumstances? Supposing that he had only resided in that county for a few years, he knew these men better than the strangers from Maryland did, and as soon as he saw the Marshal was present, he would have said, here is authority, hold back, stop this proceeding; you are guilty of murder, and I know not what else you may be involving yourselves in." Does he do it? This innocent man, this miller on a sorrel nag, and with a felt hat on, and without a coat, does he do it? No, sir. According to their own evidence, the conclusion is irresistible, that he was not innocent.

What would be the conduct of a guilty man upon that occasion? If he had been an ignorant one, we can easily perceive what he would have done. He would have rushed, as did these blacks, right into the middle of the fight, he would by some overt, positive act, have convicted himself upon the spot. But with all the shrewdness of a leader, he just so far mingles in the affray, as to direct it, and the moment he has started the attack he makes good his escape.

But he does more than this, He has forgotten himself—he forgets where he is and who are present, and in the agitation of the moment, he is thrown off his guard, and exclaims "I will not assist you"—"he allowed the colored people had a right to defend themselves;" he rode his horse over the lane where some fifteen or twenty negroes were stationed, and having stooped over, he said something to them in a low tone of voice and wheels his horse from the immediate range of the guns, and they fire. But sir, he forgot that he had used another expression, which fixes still deeper upon him the stain of guilt. "He didn't care for that Act of Congress or any other Act of Congress,"—and this innocent, prudent man—this quiet unoffending citizen, in the hurry of the moment exhibits the justice for which he had come to the spot. But you may say this was only listened to by Kline, and that, therefore, Kline was a single uncorroborated witness. Sir, Dr. Pierce swears to what amounts, after all, to very much the same thing, it shows the feeling of the man. He said to you, that he was enraged at the time, that harsh words passed between them, which rebuts the idea that he came there to do justice, and he also adds that this man Hanway refused to assist. I may also suggest, that Dickinson Gorsuch, N. Hutchings and Nathan Nelson, all swore to the same thing, and the prisoner knowing it, allows his own witnesses to swear to it. He refused to assist, and Dr. Pierce says that he said, "you need not come here to make arrests, you can't do it!" If the evidence for the prosecution is to be believed, there is the end of the case, for no man in his senses can believe that evidence, and think for a moment that Hanway was an innocent man, because his acts are not consistent with the idea of innocence; on the contrary they show that he was a guilty participant in the crime, and the intent with which he acted is to be discovered by the evidence which I have read in your hearing, in the very language of the witness, in which he expressly says he did not care for that Act of Congress or any other Act, and that they could not take their slaves. But we have overwhelming evidence it is alleged, on the part of the defence, evidence which it is utterly impossible to resist, and which must at once secure a verdict of acquittal, and I believe my learned friend asked for a certificate of good character. What is that evidence? Who leads the way? Elijah Lewis, who, it is alleged is a conspirator, who is now in the jail of this county, awaiting his trial for this crime. He is called to rebut every thing. I do say that that man's evidence, according to all known principles, is to be weighed with the utmost caution. I will not here impute to him perjury, I do not wish to do it, God forbid that I should do it, unless positive he was swearing falsely, which of course I am not, but according to every principle which I have suggested, he would shape his course so as to swear his friend, who was the leader, he being the lieutenant, out of the difficulty, and his friend would come and swear him out in turn.

But I was astonished by the result of his evidence; that a man who pretended to have been upon the spot, could have seen so little that affects the merits of this case. Elijah Lewis heard Hanway refuse to assist the officer. That is clear,

that is undisputed. The next thing he hears is, that Hanway said, "Don't shoot boys; for God's sake, don't shoot!" and then Lewis, having a proper regard for the justice of the case, and the safety of the Maryland gentlemen, makes good his escape to the woods. I need not hardly remark in passing, that Lewis is flatly contradicted by all the witnesses for the prosecution, and you have but to refer to the testimony to see it. There was not time between the reading of the warrants by Kline to Hanway and Lewis, and the firing either in the short lane or the long lane,—there was not time for Mr. Hanway to have made use of the expression, and Mr. Lewis to have escaped to the woods before there was firing. It was an impossibility for Mr. Lewis to have gone the distance, up a hill with a rise of twenty-seven feet, and a distance of some two hundred and fifty feet, to the woods, and stationed himself there, before there was firing in the lane; because, if you will recollect, every witness for the prosecution, (and they have not attempted to swear most of them out of court, as in the case of Kline,) Dr. Pierce, Dickinson Gorsuch, Joshua Gorsuch, N. Hutchings, and Nathan Nelson, all swore to the fact that that firing was immediately upon the conversation between Kline and Hanway. I say, therefore, gentlemen, that this man Lewis, in his fright it may be, in his desire to state a story here which should be as favorable as possible to the prisoner at the bar, has shown he could not have heard all the conversation that took place.

You will notice one thing in their testimony as to what he says of Kline. We will show that he is contradicted up and down in what he says of Kline. He sees nothing of Hanway going down the lane; he sees nothing of his being met by Joshua Gorsuch and Dr. Pierce; all that escapes his notice. And then he says, to wind up with the story of Lewis, that after he got into the woods, and had been there sometime, he saw the smoke of a gun.

It is for you, gentlemen of the jury, to say whether you believe his story, or whether you believe he might not have been mistaken; and it is for you to remember that every reason in the world urged that man, Lewis, to tell the best story he could for the cause, and as little as he could, and at the same time escape the charge of perjury. But there is another point of view in which you can look at his testimony. If he is to be believed at all, he escaped as soon as he could from the scene of action. If that is the case, it is to be presumed that many things might have occurrred which he didn't see, and many conversations might have taken place, that he did not hear. And you will observe, that Kline says, that when Hanway crossed the lane to the negroes, Lewis had his back to him, going up the long lane to the woods; if that were true, he of course could not see Hanway cross the lane, and knows nothing of the transaction. On all these grounds the evidence of this witness is most cautiously to be looked at, and well weighed, before a conclusion. It is entirely consistent with the story of Kline, that Lewis should not have seen or heard what took place, and therefore he may have sworn entirely to the truth, and at the same time have excluded something from view, not, I say intentionally, but through defect in memory or because he did not see or hear it.

So much for Lewis. But we come now to another great point of this defence. We are to be overwhelmed because there had been kidnappers in the county. When my friend opened that Lancaster county contained the most outrageous set of miscreants that ever existed, I expected to hear something about it. I thought perhaps we would see some one of them on the stand, or hear the story of their wrongs. I always believed the county of Lancaster to be peculiarly peaceable, and that the population was of such a character as to rebut the idea that they were overrun by a lawless set of miscreants. If this were true, though we have no evidence of it, I would suggest that the police force should be increased, and that they should no longer be allowed to disgrace Pennsylvania.

They proved that certain men came to a house and stole away a negro. I was amused when we pressed them yesterday upon the point of his being a freemen or a slave, that my learned friend who sits opposite to me, took particular caution to say that they never asked the question. If this is the outrage they say it is, would they have allowed any point of that importance to pass. They say, "we do not allege he was a freeman—we do not allege he was a slave, but he was a black man." The story, therefore, taking it in all its force amounts to this, that some imprudent southerners came there and under the decision of the Supreme Court in the United States *v.* Prigg, took with their own hands the slave that belonged to them, and carried him away—or as I am reminded by my learned colleague, there is even no evidence that there was a southerner there, but they were inhabitants of that county. I have only to say that instead of arming lawless negro bands to rid the county of such miscreants, they should have applied the means given them by the laws of the State, and had them arrested, tried and convicted. It is no excuse for them that they should be thrown into this excitement because their own citizens were guilty of these outrageous acts; but they have not shown these were outrages, nor have they even brought conviction to my mind that these men were kidnappers at all. And if they were —what then? my friends will remember that Williams knew who was coming into the country —a kidnapper? No, may it please your honor, a set of strangers? No; but Kline was coming there; whom he knew to be an officer of the law, and who in consequence of his arrival was presumed to be armed with competent authority. Where is their defence now, as to kidnappers? We have traced the officer to the spot—we have shown by their own admissions, that there was a conspiracy—we have followed Kline from point to point—always judiciously reading his warrants, and we have shown that notwithstanding all, they conspired to resist—not a kidnapper—not a lawless man who dared not set his foot upon the threshold of the house of a decent man in Lancaster county, but an officer of the

United States armed with the process of the government, and known to be such.

But they have another point of defence, and that is, the character of the prisoner at the bar. Now, may it please your Honors, I do not stand here to vilify that man's character, or the character of any one. It is easily to be conceived that men, who have not the fear of the constitution and laws, will stoop from the position they have always assumed in the community, to outrage both the constitution and the laws. I could bring to your notice, if it were allowed me do so, upon this occasion, a thousand men, who, while they are ordinarily, when no subject of excitement is before the people, peaceable and loyal citizens, yet when something is done which they do not like, which they may despise, are the very men to lead in an aggression upon the law. You are not to suppose that miserable vagabonds are to resist the laws of the United States unless urged on by intelligent men; therefore we find that a man who had heretofore been innocent, the moment there is an occasion for him to display his real character, leads in the attack. I pity him, sir; I pity his family and his friends. I came not here to war against the best sympathies of my own nature, but to sustain the constitution and laws; and if the blow strikes home to the heart of many an unfortunate individual, it is not my fault. My duty is a plain one, and I must discharge it. But, sir, seeing the weight which we have attached to the evidence of Kline; seeing, sir, that if he is to be believed, the prosecution must stand, they next attack the character of the principal witness for the prosecution. Who opens the attack? For, gentlemen of the jury, in an investigation of this sort, you must constantly keep in view the principles of our common nature. Who opened this attack? A gentleman whose character, public and private, is beyond suspicion, but who, if I mistake not, is himself opposed to the law under which these occurrences took place; tainted with the same species of notions which lead to this court-room the whole of the township of Sadsbury, and the adjacent parts of the country. Sir, they could have brought not one man, but I had almost said a hundred thousand men, who are opposed to this fugitive slave law, to swear as some of their witnesses did, that they would not believe a negro catcher under any circumstances whatever. But, may it please your Honors, this very witness, feeling as he undoubtedly does to this prosecution, says, inadvertently, perhaps, I should not say inadvertently, for I know he would not make a wrong statement, but he says, "I would believe him under certain circumstances."

The secret is out, he is a negro-catcher, and is clothed with authority under the Fugitive Slave Law. And they follow it up by a series of witnesses, some of whom acknowledge that they had had difficulties with him. Others came and stated the story of the transaction at Christiana where Mr. Kline was put out of the room; but by Mr. Bacon, we showed that the feelings of these men were tainted, not only by the nature of the prosecution, but because they had an ill-will to the man, and came to swear his character away. Fortunately, we were enabled to come to the rescue; and if Mr. Kline had any feeling the day before when he was whittled down by the defence, he must have felt an inward satisfaction yesterday which I cannot describe. Do you believe that a witness, utterly and entirely worthless—a liar, as my learned friend chose to call him in his opening—could produce seventy men upon that stand, one after the other, to swear they never heard any thing against his character till impeached the day previous; and in addition, that they would believe him upon his oath. I say it is contrary to known principles, that any man so degraded could produce seventy witnesses, and I may add, that we might have gone on to the number of two hundred if we had not been in a measure checked by an intimation from the Court. Who are these men? Many of them members of the bar, men who of all others must know the character of the police-officers around them—for they entrust to them the execution of processes. We bring upon that stand the Marshal of Police—a man whose character is high and elevated in this community—an energetic officer, and a gentleman who is in the habit of scanning with severe scrutiny the characters of men employed by him; and therefore, from the very habits of his mind, he is cautious of what he believes and what he does not. True to the truth and to his nature, he says, "I would believe him on oath, and for my own part, I may add, I would take his word for it if there were thousands who would swear to the contrary."

In addition to that, we put storekeepers, printers, painters and glaziers, and police officers upon the stand, and the effect is that they completely destroy that portion of the defence. They thought to sail upon a smooth sea when they undertook it, and they had strong men at the helm; but unfortunately for them, they have met with a gale which has completely shipwrecked them. The character of the witness is sustained beyond a possibility of doubt, and he may go from this Court-room, so far as his character for veracity is concerned, and say there is no man now who dares attack it. But you will perceive he is the main witness for the United States, in all these treason trials.

I shall now proceed to notice—having concluded the main points of the evidence for the defence—I shall proceed to notice certain discrepancies, which it is alleged have occurred between the evidence for the prosecution and the defence. After all, it turns upon this man Kline. Is he to be believed or not? Has his evidence, as he announced it from the stand, been contradicted or not in a material point? Now I would remark that they had an opportunity of throwing him off his guard on cross-examination, but they did not dare attempt it. They asked him a few general questions, and he was allowed to depart. My learned friends know well how to cross-examine a witness, but they did not do it in this case with effect. The manner in which he bore himself in the presence of the Court, and the very nature of the questions in cross-examination, all prove they could not—and they did not check him. Did Lewis contradict him? He said

he was in the woods at the time Kline was there. He is completely contradicted by Dickinson Gorsuch, who, if any man ought to know what occurred, he must, and who testifies that Kline met him in the lane as he was going to the woods, and led him by the arm and placed him upon the ground or a stump. There Lewis is contradicted point blank, by a witness whose character cannot be impeached, and whose character they have not attempted to impeach. You will also notice that Dr. Pierce states in his evidence that Kline was about the spot when they first met Hanway; at a time when, if you believe Lewis, he could not have been there. I have before shown in the examination of the evidence of Mr. Lewis, that he must have made a very hasty retreat, and could not have remained there long himself, if he himself is to be believed.

But Dr. Pierce in his examination states conclusively to my mind that Kline was upon the spot long after the time it was possible for him to have been there if Lewis is to be believed. I say therefore that to contradict him by a half a dozen witnesses, as to Kline being upon the spot when Hanway and Dr. Pierce were there, to contradict him upon this must render useless his testimony so far as the defence is concerned. But it has been stated that Kline has said upon various occasions to half a dozen witnesses, that he made good his retreat to the woods, and was in the woods, I think they said before the fight commenced. In the first place, you are to recollect that the stories which Kline told of the transaction immediately after their occurrence, would necessarily be of a very vague nature. The man was excited, arrests were being made throughout the country. He was stopped as the officer who had been there and they would naturally ask him if he did this and did that, to which he would give very vague answers. He was not under oath and there was not the solemnity attached to his answers then as now. Take the evidence of nearly all that class of witnesses, and I shall view them as as a class, because it has been impossible for me in the short time I have had, to obtain all their names, if you take the class that swore to what Kline said somewhere else, you will perceive that they have said nothing inconsistent with Kline's story, for Kline is supported by others, and their stories go rather to facts and circumstances immaterial in this issue. They say Kline said it was time to retreat, and that he went to the woods; both of these are true. Kline did not deny it. He called upon Mr. Gorsuch to retire, and begged him not to remain upon the ground, and says so himself. He acknowledges he was in the woods, he was there with Dickinson Gorsuch, and took him there after the shots were fired. If then the witness has been shown to have said nothing that materially affects the main point at issue, he has not contradicted himself.

But Dr. Pierce. Dr. Pierce is said to have damned the witness for the prosecution. How? Because Dr. Pierce said he (Kline) was a poor thing. Now, may it please your Honors, Dr. Pierce never said such a thing, and I believe there has been no witness produced to swear Dr. Pierce's character away. Dr. Pierce admitted his uncle had acted rashly, and we may all believe that, since we have heard so much of the case, but he has said that Kline acted courageously, and that he never intended such a remark. And I do protest that the remarks of these Maryland gentlemen when they were excited and when every feeling of the heart had been worked up to such a state of agitation that they hardly knew what they said, that they are brought up here to swear away their own evidence, and evidence which never would have been given in the cooler moments of the witness. We have also shown that some of the witnesses who had conversations with Kline have been rebutted by the testimony for the government yesterday, in which it was conclusively shown that Kline had never used the language attributed to him. Then again you must recollect, these witnesses for the defence are brought from a region which as a whole is infected It is utterly impossible, (the labors of the government officers having been immense, and beyond all conception,)to get at any facts and circumstances, unless it told for the prisoner.

I could have brought hundreds of men to swear to certain facts, but I could not find one who was willing to give me the assistance which the government officers needed, except perhaps an esquire in the neighborhood who kindly hitched his horse to his carriage and took me to the spot. They came here prepared to swear away any thing that might be produced on the part of the prosecution. They consider it actually necessary they should do so. While I do not charge them with wholesale perjury, I do say that they may tell facts and relate circumstances of which, as one of the witnesses has said, they had a very indistinct recollection.

You will also notice in this connection a single fact to show what the feeling was there. That Coroner's inquest, a burning disgrace to any community, I care not where it is. And who are the men engaged in it? If they were men as pure and lofty as the angels in Heaven; men who would congregate together and profane both God and man by their attempts to throw back upon the pious old gentleman, who lay a corpse before them—infamous charges—would attempt to ruin and prostrate his character; sir, they deserve the contempt they should receive.

I know not what to say. What a farce! A jury are called together, twelve learned men sitting around a table. The body is brought in before them—the officers of the Government being true to their duty, present themselves, not to swear to a story, but to tell it. Not under oath, but as a mere narrative of facts, and they are excluded. It is sufficient for them to show that the man is dead. A noble, generous, high-minded man. That he is dead, and he must be branded with the imputation of going to do—what? It is that a man clothed with the authority of the government, representing the majesty of the government upon that spot, is to have imputed to him an act, which I know if he could speak now, he would abhor, to wit, "to destroy the peace of an innocent family of colored people."

Sir, it is a base outrage. That Coroner's Inquest shows exactly what the state of feeling there was. And if you are men who can feel for the living and the dead, you must regard it as such an outrage.

But, sirs, there is another point, to which I shall direct your attention, and which may be viewed under this head of discrepancy. Dr. Pierce is made to owe his life to the kindness of the prisoner at the bar. This quiet, peaceable citizen has actually gone so far as to peril his own life for the sake of Dr Pierce.

He has thrown himself, a stranger, (according to the theories of my friends, on the other side) a stranger, (to all the blacks, and therefore, to expect no quarter from them) has actually thrown his valuable body, between Dr. Pierce and the negroes, and saved his life. And we are told that we attempt to come here, and plot against him, when he has been the very instrument of preserving the man. Dr. Pierce did say, he was of opinion he had saved his life and all the witnesses for the defence agree in the same proposition.

But when you scan the evidence, when it is shown that one hundred negroes are there assembled, that they are firing promiscuously down the lane, that Hanway is ahead of them, and Dr. Pierce is the other side of the horse, you will then perceive how he saved his life. He saved his life to save his own. And, sirs, to show you the control which he had, he raises his hand, and they were quiet. He but spoke the word, and the firing ceased If they had shot their leader, it would have been a bad thing, and the soldiers who are paraded here in Court, (as my learned friend chose to call them the other day) the soldiers could not do without a leader, and they saved Hanway's life, and in doing that, they saved Dr. Pierce's, and Dr. Pierce owes to Mr. Hanway just so much gratitude as is in proportion to the position which Mr. Hanway, at that moment, held with reference to Dr. Pierce and life. But, gentlemen, notice the scene, if I may so call it, which closes the evidence for the prosecution. A poor negro is brought upon the stand, and he swears directly contrary to what is supposed he would have sworn. Strange occurrence, it at first seemed, and I was under the impression that it might overwhelm the case of the prosecution, from the fact that it had taken place and was not explained.

But, I thank heaven a night has passed, and that cool, calm and collected men, have had an opportunity of thinking about that matter. A man, who on divers occasions swore to the mentioning of certain facts, suddenly changes his whole story. But he changes it methodically. Does he use negro language on that stand, when he explains the simple story of his former errors and his present innocence? No! Levelled directly at Kline, because he is the head and front of this offending. He says in answer to a question, before he had been interrogated and before we had asked him a single question. "I swore to several things at Lancaster, but I was scared then, but now I say I was not there."

Then follows it up, "the man Kline or the officer told me that I, (the witness) was there, and I was frightened." What did he do? Whoever taught him that story did not think of the results of it. He swore himself into the charge of treason. He swore that he was guilty, that he was on the spot. To do what? Why, to criminate himself, and unfortunately for them, to sustain Kline, long before the negro knew what he was doing or any thing about it. If the man was of an unsound mind, he has an extraordinary way of telling a story. If he is of sound mind, he shows far more education than his appearance indicates. In any event, I am willing it should weigh for nothing. I am willing it should be considered as nothing, and I will also suggest, it protects Kline, if he has to be believed, as to the fact of his being upon the ground a single man. Here was a multitude of negroes, and Kline might have mistaken him for some other, and therefore have sworn, or he was mistaken. But I should apprehend he was not mistaken when he saw Hanway and read the warrants to him, and heard his reply and saw his actions. That fixed him in his memory. He had no conversation with Scott, and therefore, may also be mistaken. I will suggest a case that has occurred in regard to an alibi.

In the case of Dr. Webster, of Boston, there were a number of witnesses, who swore point blank, that they had seen him (Dr. Parkman) in the street. They brought numbers of men to swear to that fact, and the reason why they identified him, is as remarkable as the way that Mr. Kline identified Harvy Scott. He was a lean man, and they identified Dr. Parkman beyond a possibility of doubt. I only repeat this, to show that even the best proof of alibi amounts to nothing, and that Kline may be correct; and I also mention it, to teach a lesson to all who may hear on this subject, to show that men never mistake more, than when they attempt to swear either one way, or the other, as regards an alibi, unless there is some remarkable fact to swear to, or some very striking incident to go by.

I have thus gone over many of the prominent facts in this evidence. You know that I am to be followed by two colleagues, who will of course glean, what I have neglected to gather, and will comment upon what I have not the physical strength, nor the inclination to do. But to recapitulate. I have first shown to you the transactions as they have occurred, in a chronological order. As they occurred on the 11th of September last.

That these transactions constituted the crime of treason against the law of the land. I have related them with what I consider to be the evidence of the guilt of all parties. In the next place, I have shown to you, that either this man Hanway must be innocent or guilty. If he is innocent, his innocence would naturally have appeared by his acts, and that if he is guilty, which is the most probable supposition, according to my mind and theory, that he would have acted precisely as he has acted. We have heard enough of the evidence of Lewis, to show that he was a witness, who would very readily tell the best story he could, and that the story he has

told, is inconsistent with that which, from the weight of the evidence, must have been the facts. We have next shown, that the kidnapper's story, (upon which they rest,) was itself ridiculed, and that in this particular instance, they had notice that officers of the government were coming, and therefore that is destroyed.

We have next shown to you that Kline, our principal witness, (who was attacked) has been sustained, and that the character of Hanway, being generally good and peaceable, has founded the theory of his innocence (particularly I may add in this case) upon one man, who comes here and swears he would not take up arms in defence of the government. We have next shown that the discrepancies of evidence amount to nothing, and that they are of no moment, when viewed with reference to the main points of the testimony of Kline; and that they are of no moment when viewed with reference to the testimony of Dr. Pierce, who is corroborated by other testimony. We have next shown to you, that from the nature of the country itself and every thing connected with it; from the coroner's inquest, which I have shown to be an outrage on humanity, we are to expect men to come here and swear to as much as it is possible for them to do.

And we have commented somewhat upon the evidence of Harvey Scott, and in connection with that I may again add, that I have tried to explain the reasons that he testified as he did. I of course would not for a moment pretend to charge my learned friends upon the other side with having bribed him, and I would not say that there are any in the Court house who would have done it, but I must confess, that taken in connection with the circumstance that two of our witnesses have escaped from the jail of this county, it is not remarkable that he should have sworn as he did.

A good dinner, a tri-colored scarf, a new suit of clothes, or the almighty dollar, might have accomplished the result.

Gentlemen, how is it that these occurrences have taken place? Who are the men who have instigated that which has resulted in an open violation of the constitution and the law? It is known to every man within my hearing that this is not an isolated, disconnected instance. Bigots, fanatics, and demagogues have endeavored to stimulate the populace to illegal and monstrous acts. The history of the last ten years is full of their conduct, and their opinions, and their speeches. They have not, sir, opposed the total destruction of the constitution itself. They have not been intimidated by an attempt to hurl down this mighty edifice.

They would bury in oblivion the splendid memories of the past, and execrate the men who formed the constitution and the laws as themselves infamous traitors to humanity. They would bring upon this country of ours, civil war, disunion, and all that is horrible. They would by their conduct destroy the lustre of humanity. They would tear from amid the firmament of nations the sun which has illumined them all. And sir, they would join in the universal shout which the tyrants of the world would send up, as they gaze upon the sepulchre of the Republic. Talk to me of treason, of a few negroes, headed by the prisoner at the bar! He was but acting upon principles which had been dictated to him by men high in authority, and who should have known better, from their knowledge of the laws and the constitution. But, sir, when the acts of our forefathers, when the compromises of the constitution are proclaimed to be *odious*, it is no wonder that the humble citizen should be the first to feel the consequences of it.

Sir, what would we be, and how would we feel, if it were announced to us at this moment, that this Union is dissolved, that this constitution is a dead letter, that the laws are annihilated? You may have grieved when you have parted with those you love, and you may have returned to your dreary, solitary homes and felt that you have sustained a loss. You may have been shocked while pestilence and famine walked abroad, but all this would be absolutely and utterly nothing in comparison with what you would experience, if the interests and wishes of these men were to be obeyed.

For my own part, may it please your Honors, I would join in those remarks which have been uttered by men high in authority. As a citizen, who will sustain the laws to the letter, as a patriot, devoted to the interest of the country, the constitution and the laws, I would join sir, in that desire, that if this catastrophe is to happen I may before that have walked the valley of the shadow of death, and found at any rate, *a grave* in my native land.

The prisoner, sir, when called upon by the clerk in answer to the question: "How will you be tried?" replied, "By God and my couniry!" That country, here represented by these twelve jurors, will, with a deliberation as solemn as it is pregnant in its consequences for good or evil, determine the question. I commend you, gentlemen, from the bottom of my heart, to the guidance of that Deity who has overruled our destiny. If the prisoner be an innocent man, I shall rejoice at his acquittal; but if he be guilty, let him fall.

Mr. Read. Mr. Lewis was to follow Mr. Ludlow, but he is confined to his bed; he had a vertigo, owing to some disorder in his stomach, but I have no doubt, he will be here to-morrow morning; but if not, I have no right to say a word. I have consulted the counsel of the United States, and particularly, the Attorney General of Maryland, and I am requested to state to the Court, that (owing to the illness of Mr. Lewis,) and to ask your Honors, to adjourn until to-morrow, and it will give the Attorney General a further opportunity of preparing for his argument.

Mr. Brent. I shall be very much gratified, (knowing that counsel on the other side are indisposed,) if the court will adjourn, but for myself, I ask no indulgence.

Judge Grier. I intend to give the widest rule to all the counsel for their preparation, and we will wait upon them as long as will be reasonable; the only difficulty is that we are trespassing upon the time of the jury, who are confined, though I believe not to a very great extent. I will farther state that the officers will let them take exercise

out of doors, but still they are in a state of confinement, and they may be inclined to think that we have no right to be liberal with their time, however we may be with our own.

MR. BRENT. I was about to remark, although I know that time is very important to the Court, and confinement very disagreeable to the jury, still so important is this case, that every fair opportunity should be offered for discussion. And it being arranged that Mr. Lewis was to follow Mr. Ludlow. I do not feel willing that the counsel should be precipitated in any argument.

MR. READ. I parted with Mr. Lewis last night at six o'clock. I left him very well, and I was not aware of his indisposition until I came into Court. I hope, however, that he will be able to make his appearance in the morning.

JUDGE GRIER. As I now despair of being able to attend the Supreme Court next week, though I had hoped to have got through with my duties in this Court, I have no objections whatever, considering the sudden attack of the counsel by illness, to adjourn the Court until to-morrow morning.

JUDGE KANE. It is the loss of only a couple of hours.

JUDGE GRIER. For that reason, we adjourn the Court until to-morrow morning.

JUDGE KANE. We can arrange it perhaps in this manner—if we lose two hours now, we can add two hours to-morrow—for Mr. Lewis would not at all events have been able to close to-day.

MR. READ. I would not in the slightest degree interfere with the Attorney-General of Maryland, as far as regards the preparation of his argument.

JUDGE GRIER. It will be understood, if Mr. Lewis is not well enough to-morrow morning, we can wait for him no longer.

If the gentlemen of the jury do not object, I suppose we shall have to adjourn, and I can only say, that we will try to make them as comfortable as we can during their confinement.

Philadelphia, Saturday, December 6th, 1851.

COURT OPENED AT 10 A. M.

PRESENT, JUDGES GRIER AND KANE.

The jurors were called and answered to their names.

MR. LEWIS then commenced to sum up for the defence, as follows:

MAY IT PLEASE THE COURT,—GENTLEMEN OF THE JURY. If any want of zeal shall appear manifest on my part, in the course of the remarks which I shall have the honor to deliver to you, I hope it will be visited to the proper cause. When we look at the decisions of the courts, which show what the law is in relation to the charge of treason, and when we look at the evidence which has been given in this case, it is impossible to perceive any just ground whatever of apprehension for either the life, or even the character of the defendant. I cannot, however, gentlemen of the jury, close my eyes against the strong array, which the Government of the United States has here marshalled against it; to the extraordinary zeal which has been manifested on the part of the six learned and able counsel employed; nor to the indefatigable efforts which have been used on their part to make every thing tell against him that can do so by the most remote implication. Nor can I close my ears against that appeal that cries for blood in the name of patriotism, and thus invokes to the aid of the prosecution one of the best feelings of the heart, for the purpose of cutting off and destroying one of the best citizens of the country. I trust, gentlemen, that looking at the facts as they are, and at the strong array to which I have referred, if I cannot find enough to justify any solicitude on my part as to the result of this trial, I shall still find cause enough for the little effort that the strength I have remaining will allow me to make.

This, gentlemen, is an important cause. It is not necessary for me to remind you of the gravity of the question involved, nor of the solemnity of the occasion of the issue, which you are severally sworn or affirmed to try. I am sure there is not one amongst you, but what feels sufficiently the one and appreciates the other. The life of a human being is involved: that of itself is an awful consideration. No one, however constituted, can be altogether indifferent to it, whatever may be the character of the charge, or the nature of the evidence by which it is sustained. Though that life may have been dragged through years of misery and crime, and the hopes that were once cherished, and the virtues that once embellished it, may be extinct and gone, and though the sentence of the law should but anticipate by a very brief period, the doom which failing nature had already pronounced, still the occasion is one of interest; but when that life is of a young man of fine expectations, of hopes still in their bloom, of refined sensibilities, strong in principle and pure in heart, of amiable temper and kindly disposition, peculiarly fitted for the quiet enjoyments of a home ever happy with him, and ever desolate without him, the interest is by many times multiplied. But, gentlemen of the jury, it is not life only that is here involved; the attack here is not merely upon the prisoner at the bar, but the attempt is made to brand his name with the infamy of treason, to place him upon the roll of those who, detested and execrated throughout time, have raised their parricidal hand against their country. This is no slight matter. It is hard enough for an innocent man to be charged with a capital offence, still more hard is it for a man with high patriotic feelings, to be hunted down and hooted after as a traitor, and that, too, to a country which he loves so well.

Gentlemen of the jury, this prosecution seems to me to have been commenced in a moment of excitement, of public phrenzy; for we may say, that such was the condition of the public feeling at the time. Had a little time been given, to inquire what were the facts and circumstances which went to make up the case; had a little time been given to inquire who Castner Hanway was; I think there could have been no difficulty at all. You never would have been troubled with this issue. Had passion been allowed to subside, and had the mock patriot and hero to whom this prosecution is indebted for its origin, and whose connection with the unfortunate tragedy at Christiana gave unwonted notoriety; had he been permitted to slide back in the slime of his filthy track, to his condition of insignificancy and contempt, you would never have had the duty which has fallen upon you now. The whole prosecution, gentlemen, is founded upon a mistaken idea; that idea seems to be, that in this township of Sadsbury there prevails an unwholesome and unpatriotic spirit, or I should rather say sentiment, upon the subject of the Fugitive Slave Law, and that Castner Hanway is one of those who cherishes the bane of these opinions, and that therefore he was fitted to become a sacrifice to the spirit of concord. Now, gentlemen, nothing of this kind appears in the evidence at all; it supplies us with no facts upon which such an idea can be based. The evidence leaves us here, and the truth leaves us here; without any ground whatever for the suspicion that Mr. Hanway belongs to any sect or any class which have set themselves in opposition to this law, or who cherish opinions that are adverse to its execution. On the contrary, he appears before you as a quiet humble citizen, whose whole time has been devoted to the pursuit of his lawful occupation; who has never mingled in the tempoary excitements of the day, but who has been satisfied to pursue the even tenor of his way as an humble citizen, always obedient to the laws. Under such circumstances, gentlemen of the jury, we should naturally have supposed that this prosecution, the evidence having left him in that position—altogether unconnected with those to whom are attributed these unpatriotic sentiments—we should have supposed that the District Attorney representing the United States would at once have abandoned it, and at once have relieved you of any unpleasant duty on your part, by saying that this prosecution has nothing

whatever to sustain it, and therefore the defendant is entitled to his verdict of acquittal.

But it seems, gentlemen of the jury, owing to some peculiarities, whether it be that the State of Maryland has some interests here which are not exactly presented, other counsels than those have prevailed, and we have here, notwithstanding this defendant stands before you wholly untainted and unstained by any connection with any people whatever, any sect or society, whatever their opinion may be, he is still to be prosecuted for this high crime of treason. I say, gentlemen, that other counsels must have prevailed than those which usually are found to prevail in cases of this kind, under circumstances such as these. Can it be that the State of Maryland has some peculiar object here in view, something to answer by this prosecution? Can it be that it is expected to terrify the people of the north, or the people of Pennsylvania, from looking on whenever any attempt is made to arrest blacks, whether fleeing from slavery, or expected to be fleeing from slavery—from looking on to see that no freeman is taken away, that they may have a free field to themselves? If this is the object, it is not such as Pennsylvania deserves. Pennsylvania does not deserve this treatment. She deserves it neither by her legislation, nor by the general feelings or sentiments of her people. She has always stood by the compromises of the constitution, not merely fairly, but with an inclination favorable to the south.

Her legislation has here been made the object of attack; and although foreign to the subject in hand, it is proper to say that the attack is not sustained by a reference to the course and character of that legislation, but, on the contrary, signally repelled.

The first Act on this subject is the Act of March 1st, 1780, passed for the general abolition of slavery in the State. The celebrated preamble to the Act, written by a distinguished member of the Philadelphia bar, Mr. Bradford, Attorney General of Pennsylvania, expresses in eloquent terms an abhorrence of human slavery, and the duty devolving upon our citizens as men and Christians, to provide for its extinction. The State at that time was independent. It was bound by no conditions or terms of compromise. There was no Union to which it owed fealty. It had all the powers of an irresponsible sovereign within its own jurisdiction. It had a right to say, the moment a slave sets foot on our soil that moment he is free. Nay, without some positive provision to the contrary, the law would have emancipated every fugitive from labor that reached our soil. The State would have been a sanctuary, not only of political, but of personal freedom. For slavery is an institution of positive law, and has no effect upon the condition of a human being beyond the limits of its jurisdiction. A man by the law of Maryland a slave, would cease to be a slave in Pennsylvania, unless some positive law of this state recognized his servile condition, and he could not be legally reclaimed or recovered here by his Maryland owner. Such being the case when Pennsylvania herself abolished slavery within her limits, in order to enable claimants of fugitives from labor in the south to reclaim them, it became necessary that some legislation should be had adapted to the purpose. And therefore it was, that in the spirit of comity for which Pennsylvania has always been distinguished, a provision was made in the law that abolished slavery, by which fugitives might be recovered. Sec. 11 provides, That this Act, or any thing in it contained, shall not give any relief or shelter to any absconding or runaway negro, or mulatto slave, or servant, who has absented himself, or shall absent himself, from his or her owner, master or mistress, residing in any other state or country, but each owner, master or mistress shall have like right and aid to demand, claim, or take away his slave or servant, as he might have had in case this Act had not been made.

By the 10th section of the same act, slaves brought into the State by sojourners, not becoming residents therein, might be held six months. This provision remained unrepealed till 1847, though by the Act of 1788, such slaves brought in or held by a resident of the State, became immediately free. Thus the people of the South for about sixty years, were allowed a privilege upon our soil which was denied to our own citizens.

The constitution of the United States having been adopted, the law of Congress of 1793 was passed, giving to aldermen and justices of the peace of the several States, authority to decide on the claims of persons residing in any part of the Union, to the persons or services of alleged fugitives from labor, and to grant certificates for their removal. That such ample and irresponsible power, lodged in many hands, should lead to great abuses, might have been anticipated. Officers whose jurisdiction was limited by the law of the state, to questions of property not exceeding one hundred dollars, and whose judgments were final only when the amount in dispute was under forty shillings, could not be generally fitted to decide on the liberty of human beings—and it was easy to find those holding so subordinate an office, who were willing, for the sake of the money to be made by it, to furnish facilities to the kidnapper. That great abuses were practised under this act, rests upon unquestionable authority. The judiciary committee of the House of Representatives of the State, of 1820, declare that many were sent into slavery by means of certificates improperly given, who were undoubtedly free. It was to prevent these abuses and to secure to alleged fugitives an open examination of the claims, before a respectable tribunal, that the act of the 27th of March, 1820 was passed. To this act some amendment was desired by the legislature of Maryland, who in the year 1826, sent a deputation to the legislature of this State. This deputation was treated with the utmost civility, they had seats furnished them on the floor of the house, and their representations listened to with the utmost respect. The result was the law of March, 1826, by which it was made the duty of the judges of the county courts, to hear and adjudicate the claims of owners of fugitives slaves. Provision was made

for securing to the alleged fugitive an impartial hearing, and a penalty was prescribed for kidnapping those who were entitled to their freedom. Aldermen and justices of the peace were prohibited from exercising the functions assigned them by the act of 1793, and this was evidently done, because of the abuses practised under it, which had reached a pitch that rendered them intolerable. The prohibition parts of the law of 1826, were not to prevent the recovery of fugitive slaves, but to prevent free persons from being carried into slavery under the law.

In 1832, Margaret Morgan, a slave for life, escaped from Maryland into Pennsylvania, and while there, gave birth to two children, one of whom was born more than a year after her escape from Maryland. Edward Prigg, a citizen of Maryland, acting in behalf of the mistress of Margaret Morgan, carried her and her children into Maryland without any legal authority. For this act, undoubtedly, as far as the children were concerned, a case of kidnapping, Prigg was indicted. The state of Maryland undertook his defence, and a special verdict having been found at the request of the counsel of the state of Maryland, the case was eventually removed to the Supreme Court of the United States, to test the constitutionality of the law of 1826. That court, at the January term, 1842, decided the law to be unconstitutional, and that the whole right and duty of providing the means for giving effect to the provision of the constitution relative to fugitives from labor, belonged exclusively to the Congress of the United States. An attempt, therefore, on the part of any State to legislate upon the subject, was an invasion of the federal authority, and of course void. Obedient to this decision, the act of 1847 was passed, repealing all the provisions of the act of 1826, to which the constitutional objection applied, denied the use of the state prisons to claimants to fugitives, and left the whole subject where the Supreme Court left it, and where it properly belonged, to the action of the Congress of the United States.

It appears, therefore, that the legislature of Pennsylvania, instead of interposing obstructions to the reclamation of absconding slaves has actually afforded facilities, by giving jurisdiction to her State officers for that purpose, till informed by the Supreme Court that she had no jurisdiction of the subject. She then, respectfully obedient to the judgment of the court, having the authority to decide upon the validity of her acts, yields the whole business of legislating on the subject of fugitives from labor, to the power that has constitutionally cognizance of it. What is in this of which Maryland has to complain? And why are we to be told here that Pennsylvania has obstructed by her legislation the recovery of fugitive slaves?

The truth is, the object of Pennsylvania's legislation has been uniformly twofold—first, to provide a means for the recovery of fugitives within her borders, and to protect her own free black population. The first she was not bound to do—the last she was bound to do. The first she did from comity—the last from duty. It is painful to see that this comity has never been appreciated, and no credit ever given for it.

Has Maryland reciprocated this kindly disposition towards the south, ever manifested by us? Has she not, on the contrary, treated the free black subjects of Pennsylvania, which Pennsylvania is as much bound to protect as her proudest citizen, with habitual harshness and severity. Are the rights of such subjects entering Maryland respected? On the contrary, let me ask the learned Attorney General of that State, if they are not, or were not recently liable, if found travelling within her jurisdiction, to be imprisoned, and if they could not in due time prove their freedom, to be sold for their jail fees?

Pennsylvania, as I have shown, does not deserve to be charged with unkindness towards her sisters of the Union, or with laboring to obstruct the South in the reclamation of fugitive slaves. Nor does she deserve that her citizens shall be dragged from their homes, imprisoned for months, and tried for their lives in the United States courts, on fictitious charges, as examples to terrify others.

It ought always to be remembered, that this business of hunting down fugitives, is the business of the persons from whom they escape, peculiarly, and that we really have nothing to do with it. We have no interest in it—and if the scenes to which such man and woman hunting give rise, are revolting to the sensibilities of our people, it is too much to expect them to assist, and they cannot and will not be frightened into it by prosecutions for treason.

You may irritate and exasperate public feeling, but you cannot make active slave catchers of any respectable men in Pennsylvania, even by threats of the gallows.

If, therefore, the object of this prosecution is to drive our people into an active pursuit of such slaves as may happen to come into our State, it must fail. It cannot and ought not to succeed in the accomplishment of any such object. They will not chase frightened men and women, though they be black, from wood to wood, and from hill to hill, with fire arms and bludgeons, to the great alarm of peaceful neighborhoods, and the scandal of human society.

If the object is to obtain for the gentlemen of south, free scope to hunt down their own negroes when they escape from thraldom into our territory, it was unnecessary. That they have already. The constitution and the laws of the Union give them that, and with that they ought to be satisfied. As long as they do no more our citizens will not and do not interfere. What the laws of the southern states have made property, is property here by the constitution, and may be reclaimed.

But while Pennsylvanians permit the south to pursue and recapture their own slaves in our territory, however much such man hunts may be disagreeable to us, without opposition, we still must be allowed to take care that free persons are not carried off by mistake, or under pretence of right. The south claims and enjoys the right of recapture, not of kidnapping, and while we yield with implicit submission, to the

exercise of the *right*, we must not permit the wrong, whensoever or howsoever it may be attempted.

This is then the position our population assumes. It is a position from which they are not to be driven. You may crowd your prisons with men and women, and you may darken the land with gibbets, you cannot compel them to surrender the rights of humanity or to abandon the duties of Christian benevolence.

The evidence places our client in this position. Belonging to no party, or clique, or coterie, so far as we know, having no strong opinions or feelings upon any of the agitating topics of the day; content to follow his humble calling in the quiet way, best suited to his temper and character; he claims to occupy the same ground as any other citizen of Pennsylvania, and does in truth, and in your view of this testimony occupy that ground, and no other.

As a citizen of Pennsylvania, while claiming no right to interfere with slaves, he claims the right to step forward on all occasions when injury is menaced, to avert it if he can.

This is what he intended to do, and this is what he has done, and no more. The intent—the *quo animo*—is always in cases of treason, a necessary inquiry; and that intent is written in broad characters on the face of this whole transaction. It was innocent, and not only innocent but praiseworthy.

Before speaking particularly of the circumstances constituting the tragedy of the eleventh of September, permit me here to remark that no man regrets the lamentable events of that day more than Castner Hanway. We are here neither to justify, excuse, or palliate it. In the conduct of this cause, under the instructions of our client, we have shown that the relatives of the unfortunate man, who lost his life in that bloody affray, have in Mr. Hanway a sincere sympathizer. We have, I trust, shown due respect, not only to the memory of the dead, but to the feelings of the living. They have been permitted to give their narratives as witnesses, in their own way. Not a question was asked of either of the Messrs. Gorsuchs' in cross-examination.

In order to understand the occurrences of the eleventh, it is necessary to refer to some facts which had happened previously. In the early part of this year, the house of Mr. Chamberlain, who resided in the immediate neighborhood, had been ruthlessly entered under cover of the night; his family agitated and alarmed; his wife almost fatally injured by the nervous shock given to her system, and his hired negro knocked down and dragged, bruised and bleeding, and carried away doubtless into slavery. No process was shown or pretended. A noted miscreant of the neighborhood, accompanied this band of kidnappers. And this was not the only instance. One of a similar character had occurred, according to the testimony of Mr. Pennington, but a short time previous. Such doings in a peaceful neighborhood, were well calculated to create alarm. They did create alarm among both blacks and whites, and a feeling of insecurity generally prevailed.

While this feeling existed, Kline, after having spent a day and two nights in the neighborhood, hanging about the taverns, and exhibiting himself abroad at unusual hours, made his descent upon the family of Parker, under cover of the night, with a company of seven persons armed with revolvers. The whole proceeding had a kidnapping odor about it. The persons that saw the company of armed men surrounding this house of a negro supposed to be free, and held at bay by those within, might well suspect them to be kidnappers. Such a suspicion was natural and reasonable, especially so in the peaceful neighborhood of Sadsbury, where any civil process can be served by any civil officer without arms, and where the exhibition of deadly weapons for any lawful pupose is wholly useless and out of place. Marshal Roberts might and would have apprehended all the fugitives named in Kline's warrants without a single revolver. The alarm was spread; it reached Elijah Lewis. Kidnappers he was informed had surrounded Parker's house. What then did it become him as a man of humanity and a citizen of a free State, whose black subjects it is necessary to protect, to do? To remain at home, and allow the supposed kidnappers to work their will? Suppose those men had proved to be kidnappers, and they had carried off a colored family from the neighborhood, would it not have been a lasting reproach to Sadsbury and to every man in it; and could Elijah Lewis have justified himself to the people, or to himself, in declining to step forth and arrest the attempt to commit what seemed to be a bold outrage upon the peace of the community. Certainly he was in the line of his duty when he proposed to himself to go at once to the spot where the supposed kidnappers were assembled, and to ascertain whether the suspicion was correct, or whether there was lawful authority for the proceeding. If it was proper in Lewis to go to Parker's on such an errand, it was proper for Hanway to go on the same errand. That he did go on that errand and on no other, is abundantly manifest. It is proved, not only by Elijah Lewis, but by John Burt. That they went with no other object is almost certain from the fact that no other person was called upon by either of those gentlemen who, if there had been any concert or combination among the whites of the neighborhood, would not have been the only persons that would have been summoned on such an occasion. Besides, everything that was done after their arrival on the ground, was consistent with the object avowed. Mr. Lewis demanded to see the warrants, they were shown him; and without speaking to a soul on the ground besides Hanway and Kline, he retired. Hanway also retired to some distance, but seems to have stopped, and sat on his horse near the creek, observing the proceedings, and no doubt, with a feeling of anxiety lest something unfortunate should happen.

We therefore assume it as proved, if evidence of intent can be proved by the evidence of acts, that the intentions of Hanway were praiseworthy and humane.

If you coincide with me that Lewis and Hanway came to the ground with a just and humane intent, the question may be asked, did they com-

bine after they came with the negroes to do any unlawful act. If they were disposed to dissolve the Union, or to overthrow the government in sympathy with some southern agitators, the presence of the negro force prepared for war with such extempore weapons as shot guns, clubs, and corn-cutters, and exhibiting much of the ragged valor proper to such an achievement, afforded, doubtless, a convenient and tempting opportunity. The country from the Atlantic to the Pacific is only three thousand miles, and from the St. Lawrence to the Rio Grande scarcely more than two thousand, and the number of square miles not more than six millions, and if Mr. Ingraham's head officer of a detachment of six could only be overcome, would not the rebellion so auspiciously begun in a narrow lane between Mr. Pownell's orchard and corn-field, extend at least to the orchard and corn-field themselves, if not to the whole Union, and thus make a grand stroke in the work of revolution. But these seem to be unambitious men, and not disposed to yield to the temptation. There is no evidence to show that they combined, I will not say to commit treason, for no treason has been committed by any one, but for any purpose, with the blacks on the ground. No one insinuates such a thing but Kline, and he does not make it out. He says no more than that Hanway rode over to the negroes, stooped down and said something in a low voice,—being deaf, how did he happen to hear a low voice,—and then rode off some twenty or thirty paces, when the negroes gave one shout, rushed down the lane, and fired. Now, taking this as true, and it is proved not to be, what does it amount to? What is its weight and value as evidence of guilty concert? If the words were known they would explain themselves, but unknown, the presumption is, that they were not words of incitement. If the United States alleges that the words were not innocent, that allegation must be sustained. We are not at liberty to infer it. The law does not allow such inferences. Till the proof of their nature and character is furnished, the presumption stands in place of proof, and is sufficient for all the purposes of the defence.

The sounding of horns in the house of Parker and in the neighborhood brings no aid to the averment of combination, nor indeed to any other. The horn heard near the railroad is fully accounted for, as being blown every morning to call the Irish laborers on the road together to their work. One other horn, not more, was heard and that other certainly not earlier than the usual breakfast hour. Now, although in due respect to Southern gentlemen, when on a foray after negroes, it may be well to "let no dog bark," it is a little too much to ask that no laboring man should have his breakfast. Besides, it is to be observed, that if a horn blown at the house invested was to give notice that something was wrong there, and that assistance was wanted at that place, to have blown other horns would have been to direct attention to other points, and thus defeat the very object had in view.

Kline therefore, does not make out a case of combination for any purpose. The most that he proves is a refusal to assist, and that is not denied. Even if he did prove a combination—even if stooping from his saddle and speaking to the blacks, without our knowing what he said, was proof of combination and guilty concert, it would not suffice. That combination and concert must, in treason, be proved by two witnesses. Otherwise you might by proving overt acts of violence done by others, and then combination and concert with the perpetrators of such acts by a single witness, make out your whole case against the defendant, without complying with the requisitions of the statute. I take it that where the guilt of the accused depends altogether upon the fact of his connection with others, that connection must be proved by two witnesses.

In high criminal offences, the proof of guilt must rebut every reasonable inference in favor of innocence. This is a settled established principle of penal law. Here, however, we have no need to invoke its aid. For the proof of Hanway's innocence of this charge, rebuts the theory of guilt. For Elijah Lewis, if you believe him, and his character is wholly unimpeached, not only accounts for Mr. Hanway's presence, but also shows that when the humane purpose of that presence was answered, he withdrew from the ground to a sufficient distance, to be beyond all just suspicion of participation with the perpetrators of the outrage, which might then have been apprehended, but which would not in all probability have occurred, but for the slinking cowardice of Kline. Burt and Loughead, and even Hutchings and Nelson, all support Mr. Lewis, in every point, upon which they are brought together—there is no contradictlon to it by any one witness, except Kline, and it is besides consistent in every way with probability.

Throw Kline out, and there is not a word in the testimony of any one witness, to inculpate the prisoner in a single impropriety, in word or act.

And ought he not to be thrown out? To his cowardice is owing this whole tragedy. Had he kept his force together, and withdrawn them in a body from the ground, there is no probability of their being assailed. After three of the seven, who constituted the force that went to execute the warrants, had retired, the danger was greatly increased, and yet it appears, that even then, if it had not been that Mr. Gorsuch after retreating some sixty yards from the house, had not attempted to return to make the intended arrest, nothing serious could have happened. It was that attempt that exasperated the negroes, and brought about the conflict. After the fight was over, it was not difficult even for Kline's intelligence to perceive that a heavy responsibility rested somewhere, and it was very natural for him to endeavor to shift it from his own shoulders, where every one would be disposed to place it, and throw it any where else The excitement that ensued prevented strict inquiry. Kline, told his own story, and made himself the hero of the affray. His first story threw the blame upon the rashness of the Maryland party, and it was not till after one night or more, during which he had time to invent, as well as to compose himself, he began to accuse the two white men he met at the mouth of the lane. Cowards are

always liars, and it is only needed to find in the transaction, a sufficient motive to misrepresent, and the misrepresentation will follow of course.

In order to rid himself of blame, and to inculpate others, it was necessary for him to induce the belief that he was nearer the place of the outrage than he actually was, and that Lewis and Hanway, were both present. The story he first told was then varied to suit this necessity, and to that story he has here sworn. Now that story is not true. He was in the woods when the firing began, full one hundred yards from the scene of action. Dr. Pierce shows that he was absent for a longer time from the end of the lane than Kline is willing to acknowledge, prior to the affray, and was not to be seen or within hearing. Dickenson Gorsuch contradicts him, for he speaks of meeting him first, after he escaped from the end of the long lane. Hutchings, who must have seen him, if he led the wounded man along the lane and into the woods, saw him nowhere after the firing, but in the woods. Nelson, who was in the woods at that same critical point of time, saw him there, and nowhere else. John Nott fully contradicts him, by showing that he was with Dickinson Gorsuch on the south, and not on the north side of the Penningtonville road. Loughead saw him, when he first met Mr. Gorsuch wounded in the middle of the road; and Elijah Lewis proves, that he could not possibly have been in the corn-field, but must have been in the woods, from the time he followed him out of the long lane, and that he could not have returned. Kline is confident as to Harvey Scott's presence. This he affirms with more positiveness than any other fact. He doubtless supposed, that Scott would sustain this assertion. And Scott, who if he had been present, and, who in all fairness, if believed to be present by the government, ought to have been produced as a witness-in-chief, is withheld till it becomes important to sustain Kline; and is then produced to answer a single question—whether he was present at the riot. To the astonishment and confusion of the prosecution, he answers that *he was not.* He adds, that when he testified before, he was frightened, and being told he was present, thought he might as well say so. I am glad to see that some small remains of conscience, or some just awe of the presence in which he stood, or the influence of later and better thoughts prevailed, to wring from him the truth at last. We have proved it to be the truth by three unimpeachable witnesses, and by a paper whose date proves the impossibility of mistake as to the day. Yet after all this, it was strenuously argued here yesterday, by the learned gentleman who summed up for the United States, as the argument was reported to me, for I was too unwell to come into court, that his oath here, the oath of their own witness, whom we have never seen except on the witness stand, whom the prosecution have nursed and kept at a dollar and a quarter a day for eighty days, to swear for them on this trial, whom the United States counsel have, as here avowed in open court, visited and conversed with in prison, whom we have always considered as too degraded and polluted for contact, and prepared ourselves to meet, refute, contradict and overwhelm, at every point; it has been, I say, solemnly and strenuously argued that Harvey Scott has been seduced to perjure himself, by person or persons connected with this defence. For the estimable and able gentleman who made this argument I have the highest respect, and I cannot attribute to him any thing, that is not proper to the conduct and character of a man of great moral worth, and high professional standing, and most especially do I absolve him from the invention of a calumny so atrocious and unwarranted, even by any circumstance of suspicion; but I cannot help, I am bound by truth and duty to say here, and I do say, that the imputation is a slander, villainous and atrocious to the last degree, and I stamp it with its true character, and spit upon it and trample it beneath my feet. The upshot is, Harvey Scott is brought to support Kline, but fails to do it. After this it was not necessary to produce evidence to Kline's character for truth. Unsupported by any witness as to the points in controversy, and contradicted by those that should have upheld him, he falls of course. It was not necessary under such circumstances to exhibit evidence for his further discomfiture. Still, you have had before you, a train of twenty-three witnesses, headed by that eminent jurist, and highly esteemed citizen, the Hon. William D. Kelley, who have told you that Kline's character for truth is bad. It is true, Kline has succeeded in producing a much larger number of witnesses, who give an opposite view; you have both the witnesses to that character, and their testimony before you, and can judge of them.

Kline has been supposed to derive some support from the fact insinuated, but not distinctly averred, that the negroes in the house appeared to be inspired with fresh courage on the appearance of Hanway near the bars. But the force of this suggestion disappears the moment we look at the evidence. Dickinson Gorsuch was questioned on this subject. He said that the negroes seemed inspired *after Hanway rode up.* He was then asked how long after? He answered, "Not long."

Mr. Brent read the next sentence. (Reads.) Yes, there is a long interrogatory in a leading form, embracing among other things a question, whether it was not a short time after Hanway rode up, and that not the last question in that long sentence; and to the whole he answers "Yes." Whether to the last member of the interrogatory sentence or all together, it is impossible to tell. But it matters not. "Shortly," is no definite measure of time, and the answer does not add to our information. It otherwise appears, that just after Hanway arrived, a number of blacks appeared on the ground. These are stated by Dickinson Gorsuch to have come trooping from all quarters. The blacks must have seen them, and it is not certain they saw Mr. Hanway; and they must have seen them, (being in a more commanding position than the persons around the house,) at some distance off,

as they approached. Can it be doubted, that this aid which they most desired, being that of men whom they were certain of being their friends, was what inspired their courage? Castner Hanway was a stranger, only a few months resident in the neighborhood, and as far as appears, not known to one black man present. They could not know whether he would be an ally or an enemy, or indeed either. But they knew well on what side every African would array himself in case of difficulty.

But I insist with great confidence, that Hanway, not only did nothing that was improper, but every thing that was humane and proper. Seeing the negroes with arms in their hands assembling near the end of the short lane, he called out to them, "Don't shoot—don't shoot—for God's sake don't shoot," words sufficiently energetic and impassioned to demonstrate the earnestness of his feelings. He did not, it is true, say any thing about the warrant, but Kline had said every thing that was necessary to publish the fact of its being present before. Mr. Hanway, having entreated the negroes not to fire, withdrew to a distance, when, looking back, he must have perceived some increasing confusion, and paused a little, probably apprehensive of difficulty, and hesitating as to how far he could with prudence interpose. When at length the outbreak commenced, he waited till the white men, chased by the negroes, overtook him, and he sheltered them by interposing himself and his horse, and allowing the pursued to keep before or beside him, and beckoning and calling to the pursuers behind him not to fire, retired from the ground, and did not separate himself from Pierce till after the last shot was fired and Pierce was wounded by his side. Isaac Rogers, who saw this scene, is the witness that depicts it.

Is there any thing more Mr. Hanway ought to have done? Being himself a stranger to the negroes, certainly not a favorite with them, he could not have interfered further without imminent peril. Had one or two white men of the neighborhood ventured to interfere between those Southern gentlemen and the negroes, they would have incurred the peculiar resentment of the negroes, and would have been the first to be sacrificed. The order to assist under the circumstances was silly. Had it been obeyed, the cowardly Kline would have left them in the lurch, and no good object would have been answered. The ingratitude of Pierce for the salvation of his own life, is a striking answer to every suggestion, that further peril ought to have been incurred, and conveys in itself an admonition. The desire for a sacrifice is stronger than gratitude for important services, and considerations of policy overcome every feeling proper to the man.

But take it that Lewis and Hanway both looked on, as spectators. Why should that fact involve them in a prosecution? Let it be understood that every white man who witnesses a scene of violence between the negro and the negro-catcher, and does not help the negro-catcher, is to be considered an enemy of the United States, and every man in every northern State whose presence would be a restraint upon the negro, will keep aloof from all such occasions of difficulty, and leave it to those immediately and personally interested to fight the matter out as they may, and leave it to the legal authorities to deal with the offenders after the mischief is done. Indeed, I am not sure that this prosecution will not of itself produce this effect. It has already proved that a blameless life, an unspotted character, and great propriety of conduct, are no protection against a legal assault upon life whenever excitement happens to prevail, and that no man who can be implicated even by ingenious falsehood, is safe when the views of a neighboring State are to be answered. Though the prosecution should fail, Hanway is ruined. The whole earnings of ten years hard handed industry are absorbed in the expenses of this prosecution. The lesson is a hard one, but will not be taught in vain. Whether those who shall hereafter come to Pennsylvania in pursuit of fugitive slaves shall derive any benefit from the fear which may be inspired among our people of interposing under any circumstances that may arise between the master and the slave, or being found near enough to interpose, lest danger of misconstruction of motives and objects should be incurred, will hereafter appear. My apprehension is, that the consequences of this prosecution will be most injurious in every respect to the interest that has most favored it.

I have endeavored to show that so far from being guilty of treason, there is no reasonable ground for imputing even impropriety to our client.

To constitute treason, many things must be proved, not one of which here exists. War must have been levied,—here was no war,—with the intent set forth in the indictment, of which there is not a semblance of evidence. Our client must be implicated, by evidence of combination, which even Kline himself, false as he is, does not show; and two witnesses must show that combination, which even if it were testified to by the only one who has tried to do it here, would require in your view two beside. Never, indeed, was such a prosecution founded upon evidence so meagre, nor such a charge seriously made, that would be so foolish, if it were not that the subject is so serious.

If the issue were on the Fugitive Slave Law, and the question here was, whether Mr. Hanway disapproved it; he could not be convicted even of that offence—if offence it may be permitted to call it. Let me ask you, can any one of you say, from any thing you can have heard here, that Castner Hanway has any opinion either one way or the other on that subject. Yet, though he disapproved of that law, I trust there is still some space between that and treason. We are not here to try that law, or to try him for his opinions about it. The law is now on trial itself in the country, and it is right that it shall have a trial. My belief is, that the South will be the first to pray for its repeal, and that it is now a most effective instrument for working out emancipation. It is the means of carrying back many to slavery, who for a period have tasted the sweets of liberty. They will preach abolition

sentiments, and infuse abroad abolition feeling among their own people, more effectively than all the abolition lecturers, north of Mason and Dixon's line. Every reclaimed slave becomes an apostle of freedom, and creates wherever he goes a circle of disaffection around him. The consequences of this are not yet apparent, but it will not be long till they will be seen and felt, and the South will pray earnestly to be relieved of a law which endangers their own security.

The law of treason ought by this time to be understood.

Montesquieu informs us in his Spirit of Laws, that it is determined by the laws of China, that whoever shows any disrespect to the emperor is to be punished with death. However variously defined, the law of treason in most countries is reduced by ingenious construction, sometimes at the instance of faction, but more often at the command of power, to about the same thing. In Austria and in Prussia, in England and in France, it has been habitually used as a ready instrument of vengeance against an obnoxious person or class, or as a convenient pretext for murder, when demanded by state policy, or the pleasure of the ruling authorities. But the fathers of our government, deeming the life and liberty of the citizen of too much moment to be subjected to the sport of factious excitement, or to the dominant spirit of power, ever aggressive and impatient of contradiction or restraint, have made the definition of treason a part of the paramount law, which every federal officer is sworn to support. This definition is short, plain, and precise. Its meaning is involved in no phrases of dubious import, or of technical subtlety, but is as easily understood by the layman as the lawyer, by the way-faring man as by the scholar, by the juryman as by the judge. To the layman and way-faring man it simply declares what *is* treason. To the lawyer and the scholar, bewildered in the mazes of the metaphysical jargon with which judicial butchery, in violent times, racked their brains for reasons for doing wrong; to the judge and the juryman in admonition of the duty of discarding bad precedents and of abstaining from the extension of crime by construction, it does more; it declares what is *not* treason.

"Treason against the United States, shall consist *only* in levying war against them, or in adhering to their enemies, giving them aid and comfort."

This definition was carefully considered before it was adopted. It was framed by men who, in the exercise of the right of revolution, had risked the penalties of treason, and studied the subject on the steps of the scaffold. Justly indignant at the wrongs that had been perpetrated, and the blood that had been shed for fictitious offences, made treason by ingenious construction, they determined to deprive both faction and power of so potent an engine of mischief, long used and abused by demagogues and despots. They cut off at one blow, that once flourishing and fatal branch of interpretative treason, whose fruit was not justice to the guilty, but death to the innocent. They defined the crime by terms severely strict and rigorously exact. Every word is highly significant. There is not a syllable to spare, nor one on the meaning of which sophistry can hang a doubt.

"Treason shall consist only in levying war, &c." The courts shall make nothing else treason. The legislature shall make nothing else treason. No power in the State shall make any thing else treason. The same words which gave to the acts enumerated the highest denomination in the catalogue of crimes, contain an emphatic prohibition against the slightest extension. The offence requires the existence of *war*. Its *sole* element is war. It cannot be committed in time of peace. To be guilty of the crime a person must be actually engaged in the war, or giving aid to those that are. To contemplate war is not enough, to advise it is not enough, to conspire to wage it is not enough. The war must be actually levied.

It must not be a mere tumult—a fight—a struggle in arms between individuals or companies, or violence offered to an executive or military officer of the government, in a matter relating only to individual interest or private right, but it must be national in its scope and object. It must possess that dignity in mischievous design that aims at the life of the government, or at least at the prostration of some branch of its power by an armed opposition. It must have the impress of universality. A contest between the lords of neighboring manors, involving the destruction of many lives by small armies, raised and maintained for the purposes of mutual revenge and plunder, was decided even by an English court, in violent times, to be no treason. An attack on the negro population of a town or city, by an armed mob of a thousand, such as has occurred in both Columbia and Philadelphia within a few years, has never been supposed to be treason A combination to destroy a newspaper press by violence, and to overcome all opposition by arms, and the purpose executed, as happened formerly in Baltimore, when the Federal Republican press was destroyed, General Lingan killed, and a number of other persons grievously injured; though the mob held possession of the city for days, overawed the police, and set the municipal authorities at defiance, was deemed no more than misdemeanor. The driving of the peaceable Mormons from the city of Nauvoo, at the point of the bayonet, and with no inconsiderable slaughter too, though battles were fought and a siege maintained, passed unnoticed by the United States government as an offence cognizable only by the local tribunals. The same remark applies to the Philadelphia riots of 1846, when churches were burnt and houses destroyed, your streets barricaded, your windows shaken by the thunder of artillery launched in civil strife, and your population of near half a million of persons stricken with terror and forced to call on the country for protection. Such cases, though wearing much the appearance of war on a limited scale, and possessing many of its characteristic features, do not amount to war in the constitutional sense, as generally received and understood.

Upon the question, what constitutes a levying

of war, there have been several determinations in the Federal Courts. The first occasion that occurred for its consideration, was that of the Western insurrection in 1794, five years after the constitution was adopted. The second was Fries' case, only five years later. The government was then new, the treasury exhausted, and the nation comparatively weak. The trial of the great experiment of a constitutional republic was considered of doubtful success, and was watched with earnest solicitude by the statesmen of the day. The value of the Union was still a debateable subject. Reverence for the constitution had not become a common sentiment. In every speck of disaffection there was danger. Every open opposition to the regular action of the government, furnished just cause for alarm. The federal authority was in the hands of men who held high-toned opinions, and who were disposed to carry out these opinions, in the exercise of their official functions. The judges had been educated in the English law, and naturally looked for their guides to the precedents which that law furnished, and which were established in dark and remote periods, and who could not anticipate the more liberal and enlightened sentiments which have since animated English jurisprudence. Under such circumstances we should reasonably expect to see strong ground taken and strong doctrine promulgated. And such we find actually to have been the case. Under different circumstances the law might have been, and probably would have been differently ruled; or general principles laid down less broadly. Had the strength of our government been tested by fifty years experience; had our population instead of three, been thirty millions; had our territory extended from the St. Lawrence to the Rio Grande, and from the Atlantic to the Pacific, and had the increasing intelligence, light, and liberality of another half century thrown its influence upon the judicial mind, it can scarcely be doubted that the doctrines advanced would have assumed a different tone, and their drift and tendency taken a different direction. As it was, they gave great dissatisfaction, and have been subjected to severe criticism by learned commentators. Still as far as they bore upon the particular circumstances under investigation, in application to the facts proved by the evidence in the several cases, they may perhaps be safely admitted to have the force of precedents. But they are not to be received as bearing upon a case varying in any material point from those then in hand.

The history of the Western insurrection is generally familiar. There was an extensive combination, embracing great numbers of the inhabitants beyond the Alleghany monntains, not only of the State of Pennsylvania, but of Virginia also, to resist by force the action of the general government. It commenced in 1791, and continued till 1794. Peaceable means were first resorted to. Application was made to Congress for a repeal of the obnoxious Act.

That having failed, resort was had to force, and within the disaffected territory the excise law was as effectively annulled as though it had been repealed by Congress. Even those who were disposed to obey it, were prevented through the terror of the insurgents. Proclamations were issued by the President; requisitions were made on the militia of New Jersey, Pennsylvania, Maryland, and Virginia; and our army, composed of several divisions, and commanded by an officer of high military reputation, was marched into the disaffected region, and a considerable force under General Morgan was left to occupy it as a conquered country. It was in view of such circumstances that the language quoted by my friend, the District Attorney, was employed. Judge Patterson declared that the object of the insurgents "was of a general nature, and of national concern." The magnitude of the effort was in proportion to that of the object, and required no inconsiderable exertion of the force of the nation to defeat it; it was therefore deemed *a war*, and those that waged it in opposition to the national authority, traitors.

The Northampton insurrection was not of equal extent; and owing to the prompt and efficient action of the government, did not become so formidable. Three counties, however, Northampton, Bucks, and Montgomery, were engaged in the opposition, which assumed an aspect sufficiently threatening to require the interposition of military force. The legislature of Pennsylvania resolved to co-operate with the general government, in case it should become necessary, and the authority of the executive of the State, as well of the Union, was actively exerted to suppress the spirit of resistance. The object of the insurgents was to obtain a repeal of the house and direct tax law; they proceeded to acts of violence, and they succeeded in impressing the public with the opinion, or at least the apprehension, that they had sufficient power to effect their purposes. It was in reference to such circumstances that the judges delivered the charges so largely quoted by the District Attorney in his opening. They did not decide that these circumstances constituted a levying of war, but they presented the case in such a way as gave a pretty clear intimation of their opinion, and on a precisely similar state of facts, those opinions would operate with great weight. Still the general expressions are to be applied to the cause then in hand, and not to a cause altogether differently constituted.

Judge Peters was certainly too sound a lawyer, and too humane a judge, to design that the language imputed to him, should be understood in its strict literal sense. The report of the Fries case, makes him say, "it is treason in levying war against the United States, for persons who have none but a common interest with their fellow-citizens, to oppose or prevent by force, numbers, or intimidation, a public and general law of the United States, with intent to prevent its operation, or compel its repeal;" and this passage is torn from its context, and presented here by the learned counsel of the United States, as an authoritative exposition of the law of treason. The force of the language is most readily perceived by rejecting all superfluous words, throwing out such members of the sentence, con-

nected by the disjunctive conjunction, as obscuring the point, and making a somewhat different collocation of those retained, by placing the verb and the object nearer together. Thus, "it is treason, in levying war against the United States, to oppose by intimidation a general law, with intent to prevent its execution." This is the concentrated sense of the passage, and if it is to be considered as announcing a general principle, applicable to all cases, as the District Attorney would have you suppose, it is to be taken as declaring that levying war, in the meaning of the Constitution, does not require force, but only intimidation, and that the intent with which the intimidation is used, need not go beyond the prevention of the execution ot a law of Congress, in any particular instance. The words are without qualification. To smuggle goods is to prevent the execution of the revenue laws, and to threaten an officer of the United States, attempting to execute those laws, so as to intimidate him, would be treason, if this is all that would be required to constitute it. Even to prevent a United States Marshal by intimidation ftom summoning a juror to attend this court, would, according to this construction, amount to the same offence. But this was not the meaning of Judge Peters. He meant nothing so absurd. He spoke in reference to the facts before him, the means used and the object avowed. He intended merely to recognize the decision in the case of the Western insurgents, and to do no more, for he says in immediate connection with the passage excerpted from his opinion: "Force is necessary to complete the crime, but the quantum of force is immaterial. This point was determined by this court on a former occasion, which was, though not in all circumstances, yet, in principle and object, very analogous to the subject of our present inquiries. I hold myself bound by that decision, which, with due consideration, I think legal and sound." What that decision was, we know; for the facts have become a subject of history; and the decision was, that that there was a levying of war within the meaning of the Constitution. But what the charge of the court was, we do not know. We have no report of it, but only of what is said to be *its substance.* We have not the language of Judge Patterson, and who can say that there has been no transmutation in the process of condensing; or, that the meaning has been faithfully preserved, while many of the words that conveyed that meaning have been omitted, and the phraseology changed? As the book has it, he says: "The first question to be considered, is what was the general object of the insurrection? If the object was to suppress the excise offices, and to prevent the execution of an Act of Congress by force and intimidation, the offence in legal estimation is high treason. It is an usurpation of the authority of the government. It is high treason by levying war; taking the testimony in a national and connected point of view. This was the object. It was of a general nature and of national concern." Whar. State Tr. p. 182. In this description of the offence, we recognize nothing of the accuracy or finish, which characterize the productions of that eminent jurist, and it is most certain, that it does not embody his whole meaning. For it cannot be doubted that an insurrection to suppress the excise offices of a limited district of country, and to prevent the execution of an Act of Congress therein, through a spirit of private revenge, with a view to individual interest, or for purposes of plunder, though by force and intimidation, would not amount to a levying war, and would not be treason; and it is an imputation upon the candor, fairness, and impartiality of the judge, to suppose that he was not careful in describing the crime of which the defendants were accused, and to attribute to him an omission in that description of the main ingredient of the offence—the intent with which the overt acts were done. All that we have therefore in relation to the subject of levying war, in the reports of the trials of the Western insurgents, and of Fries, in the Northampton case, is very little, and that little of no authority, beyond the cases decided. When such cases occur again, they will be precedents. Until they do, the reports of these trials may be left upon the shelf, without detriment to law or justice.

I leave out of view altogether, the charges to grand juries, from which the learned District Attorney has made such copious quotations, because they do not possess the character of authority; and though entitled to respect as the opinions of eminent men, are entitled to no more respect than the opinions of other men equally able, who have never held judicial positions. Such charges are delivered without the benefit of argument by counsel, and as guides to an inquiry preliminary to the trial, and are never to be cited as binding upon the judgment or consciences of judges or juries. The charge of Judge Chase to the jury in the second trial of Fries, may be put in much the same category, as charges to grand juries; as by his arbitrary conduct on the trial, he drove the counsel for the prisoner out of court, and deprived himself of the assistance which he might have received from their arguments, in interpreting the law. It is pertinent however to remark, that in his statement of the law, he has been more precise, exact and definite, than either of the judges whom my friend has quoted at large, and been more careful also, to exclude any inference that a war can be less than a blow aimed at the sovereignty of the republic, by the application of force, and with purposes, and by means commensurate with such an object. "Is is," says he, "the opinion of the court, that an insurrection or rising of any body of people, to prevent by force or violence, any object of a great public nature, of public, general, or national concern, is a levying of war against the United States, within the contemplation and construction of the Constitution." And he takes the precaution further to observe: "The court are of the opinion, that the assembling of bodies of men armed and arrayed in a warlike manner, for purposes only of a private nature, is not treason, although the judges, or other peace-officers, should be insulted or resisted, or even great outrages committed to the persons or property of our citizens."

The prosecution has referred to this opinion without reading it. It happens not to fall into their line of argument so well as the looser phraseology, attributed to Judges Patterson and Peters. Its terms are still very general, and they need the illustration which is furnished by the facts to which they were applied. Those facts have been already adverted to. A wide spread disaffection existed. Formidable preparations were made to resist the law by force in three counties, and actual reristance had been made, yet the court in the case of Fries, has been universally considered as having carried the law of treason to the utmost allowable limits, if it has not surpassed them. The celebrated Luther Martin, in his argument on Burr's trial, vol. 2, 274, after proving by authority, "that an assemblage of men, even armed in military array, is not to be considered as treasonable, unless their intention be proved to be treasonable, that is, (applying the doctrine to this country,) unless the intention be to subvert the government of the United States," uses this strong language.

"Sir, I execrate a contrary doctrine as highly tyrannical and oppressive. And here I beg leave to enter my censure against the decisions of the court of Pennsylvania, on this subject, in the cases of what were called the whiskey and hot water insurrections. Some of them were decided in my opinion improperly to be guilty of treason, according to the Constitution of the United States. I shall not fully examine this subject at present, bnt I think it my duty to enter my solemn protest against the decision of the Court in those cases, although made by gentlemen of learning and integrity, and if ever the question should come before the Supreme Court, I will endeavor to show that those decisions were illegal and improper. In those cases there was no design to subvert the government. Such a thought was not entertained. It was the expression of their disapprobation of a particular law, and an opposition to the execution of that unpopular law, and the intention of those people went no further than to induce its repeal. But according to the authority already referred to, though war was levied with all the solemnities of actual war, though violent acts were committed and a number of people killed, yet the parties engaged in it would be only guilty of a great riot, or at most of murder, but not of treason, on this principle, that their intention was not treasonable, *that the subversion of the government was never in their contemplation.*"

Judge Tucker, in his valuable edition of Blackstone, reviews the doctrine of these decisions, and dissents from it in an elaborate commentary, written with great force and comprehensiveness of reasoning.

In United States vs. Hoxie, already referred to by my colleague, Judge Livingston cites the Western insurgent cases, and Fries case, without approbation, and draws broadly the line of distinction, between such public systematised insurrections, as threaten the existence of the government, and those minor offences, which partake more or less of opposition to the laws of the United States, but which from their suddenness, imbecility, and want of organization, are incapable of making a serious impression upon the peace of the nation.

In the United States *v.* Fries, Judge Chase has drawn his description of treason from the English authorities, but has omitted those specifications which assist to explain the sense of the commentator and limit the application of the terms employed, and it is useful, therefore, to refer to those authorities for a more definite idea of what is meant by levying war. Lord Hale, vol. i., p. 150, says, "An actual levying of war against the king consists of two principal parts or ingredients, namely; First, it must be a levying of war; second, it must be a levying of war against the king. What shall be said to be a levying of war is partly a question of fact. For it is not every unlawful or riotous assembly of many persons to do an unlawful act, though *de facto* they commit the act they intend, that makes a levying of war, (for then every riot would be treason, and a l the acts against riotous and unlawful assemblies had been vain and needless,) but it must be such an assembly as carries with it *speciem belli;* as if they ride or march *vexillis explicatis*, or if they formed into companies, or were furnished with military officers; or if they are armed with military weapons, as swords, guns, balls, halberts, pikes, and are so circumstanced, that it may be reasonably concluded they are in a posture of war."

The language of Justice Foster, (Foster's Cr. L., p. 209,) though not so particular in the enumeration of the circumstances necessary to constitute a levying of war in the sense of the statute, is to the same general effect. And he adds, that an insurrection to throw down *all* inclosures in a *particular place* or *county*, to pull down all brothels in a particular town, or to remove a lo al nuisance, is not such an insurrection as amounts to a levying of war.

The last decision in the American courts is that in United States *v.* Hoxie, already mentioned. In that case Vandusen had sent a raft of timber to be transported to Canada, in violation of the embargo laws. It was seized on its way by the collector of Vermont, and placed in the custody of a company of militia. While the company were at some distance from the raft, a company of about sixty men, hired for the purpose, and armed, some of them with a dozen muskets, and the rest with clubs and spike poles, assembled with the intention of rescuing the raft, and if necessary, of making prisoners of the troops that guarded it. They got possession of the raft without resistance, no one being near it, and proceeded towards Canada. In about an hour, as the raft passed a point of the shore twenty rods distant, the troops fired upon it, and those on the raft returned the fire. This firing continued until the raft was beyond the reach of musket shot. About one hundred shots were fired from the raft, and the balls struck trees on the shore, and the shot from shore also struck the raft, but no persons were wounded. The firing was in earnest, and intended for execution.

Here was a combination of men to prevent the execution of an Act of Congress by force, the

authority of the United States successfully resisted, and the occurrence of an actual skirmish between an armed body and troops in the service of the nation sent to defeat the unlawful enterprise. Such circumstances clearly constitute a case of treason, as the law is expounded to us by the District Attorney. Not a single ingredient of the offence is wanting, yet the Court decided in the most emphatic terms, that the offence was not treason. Judge Livingston remarks, that were the examination restricted to the consideration of the crime, as defined in the Constitution, "it is impossible that a moment's doubt could be harbored of the true character of this transaction. A levying of war without having recourse to rules of construction or artificial reasoning, would seem to be nothing short of the employment, or at least, of the embodying of a military force, armed and arrayed in a warlike manner, for the purpose of forcibly subverting the government, dismembering the Union, or destroying the legislative functions of Congress. These troops should be so armed and so directed as to leave no doubt that the United States or their government were the immediate object of their attack." After a full review of the English and American cases on the general subject, the learned judge proceeds, "It is impossible to suppress the astonishment which is excited at the attempt which has been made to convince a court and jury of this high criminal jurisdiction, that between this and levying war, there is no difference. Can it be seriously thought, that an American jury, with the Constitution of the United States as a guide to their interpretation, or even on the cases which have been cited, can be brought by engrafting construction on construction to leave far behind them English judges and English juries in their exposition of the law of treason. In what can we discover the treasonable mood, which common sense as well as all the authorities tell us is of the very essence of the offence? Can it be collected from the employment of ten or twelve muskets? Some judges have said, how correctly is here of little moment, that the *quantum* of force is immaterial. But when we find it so very small and despicable, it furnishes strong evidence of some intent very far short of *measuring their strength with the United States;* unless we can believe that a force, if it deserve that name, scarcely competent to the reduction of a single family, were meditating hostilities and rebellion agaiust a government, defended by several millions of freemen.

This decision places the law of treason upon an intelligible principle, and gives to the Constitution a common sense construction. It does away with the idea of constructive war; of a war in a legal sense, without a war in fact; of a war by which men may become traitors without a war of which the country has ever had any knowledge; and, in short, of all microscopic wars, to be distinguished only by the aid of such optic instruments, as a Billings or a Scroggs of imfamous memory have invented to magnify innocent specks into bloody blotches, when a judicial assassination was resolved upon in council.

Judge Grier. Mr. Brent, are you ready to proceed

Mr. Brent then rose, and spoke as follows:—

May it please the Court; Gentlemen of the Jury. I was in hopes that I should not be precipitated on the argument on behalf of the prosecution to-day. I am suffering from a severe cold, of which I had hoped to be relieved in the morning.

Mr. Read. I have only to say, (may it please the Court,) that we do not desire the Attorney General of Maryland to speak, if he is at all indisposed.

Mr. Brent. I prefer commencing at once, rather than delay the Court.

Judge Grier. Mr. Brent, if you are unable to commence your speech to-day, you can postpone it till Monday, as we feel disposed to give every gentleman a fair opportunity for the preparation of his argument.

Mr. Brent. Your honor will perceive, that I am not physically disabled, but still I am suffering from that, which will in some degree affect my voice.

Gentlemen— If a stranger (unacquainted with the facts of this case,) had been present at certain stages of this trial, he would have supposed that the State of Maryland in all her sovereignty, was upon trial before this jury. He would not have supposed that Castner Hanway, (surrounded by a host of sympathizing friends and eulogizing witnesses,) was here for any other purpose than as an object of glorification and exaltation. And yet, gentlemen, he stands arraigned upon the oaths of the Grand Jurors for the Eastern District of Pennsylvania. He stands arraigned upon an indictment, charging him with the heinous offence of treason—treason against his country! Did the State of Maryland, do this? Did the State of Maryland, send any agent here whatsoever, for the purpose of going before that Grand Jury, for the purpose of instituting that prosecution, and urging on the grand inquest of your State? No, gentlemen. It has been procured by the instrumentality of the constituted authorities, by the regular officers of your court, and by the consciences of the Grand Jury. But, gentlemen, allusion has been made to my own appearance in this case. An allusion in the public prints, who have not sought to investigate the facts connected with that appearance—an allusion echoed here in the opening statement of counsel. I will therefore, (though contrary to my habit,) speak somewhat of myself, and in as few remarks as possible, explain why my colleague and myself, have appeared in this case. This is but the second instance in which a citizen of Maryland, pursuing his lawful property upon the soil of your State, has fallen a victim; and it is but a few years since young Kennedy perished at the court-house door in Carlisle, claiming his property by the legal process of the law. This incident, gentlemen, followed at last by the melancholy death of Mr. Edward Gorsuch, have inflamed the public mind of Maryland, (not to seek a victim by shedding innocent blood,) but to see if she cannot come here, and in friendly, but courageous communion, with her mightier sister Pennsylvania, consider whether this evil is to continue *for all time.* This is a wide-

spread feeling among us. Public meetings have been convened, and there is perfect unanimity of sentiment in our State, through the length and breadth of her borders, upon this subject. We all believe that our citizens have a right to come into Pennsylvania, and, that you have plighted your word and honor, that this fugitive property shall be surrendered on claim. There is a feeling in my State, that no Marylander is safe in coming here for the purpose of capturing his property; and these public meetings, expressing the unanimous sentiment of the people of Maryland, have compelled her Executive to act in obedience to that public sentiment. And not by my own seeking, or by my own personal wishes am I here, gentlemen, on this day, but in obedience to the high behest of our patriotic Governor, did I apply to the learned District Attorney of the United States, (Mr. Ashmead,) for permission to appear in this case. It has been said in the prints of your city, that I sought to come here to supersede that learned officer before you. Allusion has also been made in the opening speech of the counsel for the defence, that the learned District Attorney for the United States is in the back ground. Gentlemen, I do not see how or why those assertions were made on the part of counsel. I very much mistake the matter, if the learned District Attorney for the United States, desired any such defence at the hands of the counsel for the defendant. He is fully competent, I presume, to vindicate his own dignity and position. I can only say to you, gentlemen, that it is untrue, that I have ever sought, or that Maryland ever sought the position of leading or controlling counsel in this case; wholly false, upon my honor, I utter it. There was an unfortunate question of etiquette between the learned gentleman and myself, which, I am happy to say, upon my arrival in this city, was fairly and honorably adjusted between us; and I consider myself and my colleague, (Mr. Cooper,) this day in this cause, not as the exclusive counsel of Maryland alone, but here by the sanction of the general Government; here in the name of, and upon the responsibility of the general Government. Is it not strange? Is it not unprecedented? Is is not irregular that counsel for the defence should look into these family dissensions and jarrings, if any there be. But we will not retaliate and inquire, how it is that there is such an array of counsel for the prisoner, and who and what interests are represented on their side. We would not so recriminate if we could. Why does the State of Maryland desire representatives here? For the peace and harmony of these two border States. Suppose, in the inflamed and excited feeling of Maryland, without a representative here, and without one of her own citizens here officially to investigate the facts, and report the history, progress and result of this trial—she merely saw a verdict of acquittal, deriving all her knowledge from the public prints, would that satisfy the public sentiment of the State of Maryland? Would she take the mere report of the trial in the public newspapers of Philadelphia? It might be the fairest, the most just and honorable acquittal of this man in the world; and yet Maryland would not know it, and could not believe it. Is it not right and proper therefore, that she should have counsel here for the purpose of taking part in this trial, for the purpose of sifting this evidence, (upon their high responsibility and position,) and then reporting the facts to their constituency I can only say, speaking for myself, and doubtless, for the equally pure conscience of my colleague, that if (upon the closing of this evidence,) we could have believed that Castner Hanway stood acquitted of this indictment, we would have been proud to proclaim the fact of his innocence. What does the State of Maryland care for the individual destiny of that man? Has that great community, has she nothing to occupy her thoughts and her feelings, but the desire to thirst for the blood of an innocent man?

No, gentlemen, such a charge and imputation made, wherever it may be, upon the State of Maryland, whose escutcheon I am compelled this day to hold aloft, untarnished and unsullied, such imputations upon her honor and good name, *I pronounce to be libellous.* She thirsts for no innocent blood. She does desire to see justice done to her citizens. Not only as an act of justice to their memory when murdered, but as an act of protection in future to others now living. Gentlemen, I did not think that the appearance of the State of Maryland here, by counsel, acting with the sanction of the general Government, and under the control at all times of the counsel of the United States, I did not suppose, that the appearance of my State here by counsel, would be the signal for excitement and denunciation. I did not suppose that my State coming here to reason this matter as friend to friend, and sister to sister, would be met by any such insults. And for what? for what? Is it necessary for the purpose of the defence that this should be done? Is it necessary or proper to get up collateral issues here merely to influence and mislead your verdict? Not at all. Are you, gentlemen, not competent as jurors? Are you not competent to see when the State of Maryland or the counsel for the United States, may desire to press a prosecution unjustly? Is there not reliance enough in your intelligence and impartiality to shield this prisoner from persecution, without having this eternal cry, this systematic shout in your ears, that the State of Maryland is here thirsting for blood? Why try this cause, not upon the merits of Castner Hanway, but on something else, foreign and collateral to those merits? Why do all this if there is conscious innocence here? Gentlemen, it is the part of skillful and ingenious counsel, pressed by the merits of a prosecution, to get up these collateral issues, and to appeal to the prejudices of an excited jury, if susceptible of such prejudices, to acquit a party by some extraneous considerations, rather than by the evidence and merits of the cause. Now, suppose the State of Maryland could sully herself with the disgrace of coming here, in the face of an overwhelming defence, in the face of most convincing evidence, and that she should claim his

blood because she thirsted for it, about which I shall again have something to say before I conclude, are you not competent to decide that? Are you not competent to understand that, without these repeated warnings rung in your ears? But, suppose the party is guilty, is he to be acquitted, even if the State of Maryland thirsted for his blood? Whether she is here rightfully or wrongfully, is that to make the man less guilty? The witnesses less credible? The truth less manifest? Not at all. Strike out and reject all these extraneous considerations, and all these artful appeals to your passions and prejudices. It is, after all, one single issue, which in the sight of a heart-searching God and your country, you are to try. Allow me before proceeding to discuss the legal merits of this case, to depict for one moment the condition of the South.—Originally, (upon the "Declaration of Independence,") I believe slavery prevailed in all (or nearly all) of these States. The original taint of slavery (if it be a taint) rests upon the escutcheon of every one of the old thirteen States. It was your fortune and the fortune of your more Northern sisters, (owing to the accidental fact that you had but few slaves comparatively in your borders) I say it was your fortune to eradicate from your institutions that of Slavery.

The Act of 1780, which has been referred to, I believe is at the foundation of the anti-slavery system of Pennsylvania. When was that Act passed? Passed before the adoption of the present Constitution. Passed, in the language of the counsel, when the State of Pennsylvania was independent. When she was only associated in the articles of the confederation, and not associated in that closer and more intimate and binding relation in which she now stands to Maryland and other States of this Union. What, I say, is the condition of the South? Not able to emancipate her slaves, because she had not the opportunity that you and the Northern States had from the paucity of the number of your slaves. Not able, if the South had desired it. Could she have liberated her *multitudinous* slaves? But *do not understand* me as arguing the abstract question whether slavery is right or wrong; for *we of the South do not argue such questions out of our own borders.* But I say, look at the facts. Are the people of the South to emancipate those of a hostile caste? With this African caste there can be no social and practical amalgamation, except by a few degraded people. What is to become of them? Are they to be turned free, and as paupers to wander through our land? You have comparatively few, and you do not feel the evil of having a free-colored population as the South does; where they are vastly more numerous in proportion to the white population than they are here. The State of Maryland has nearly as many free colored people and slaves, as she has white citizens. We have not the wealth and treasure to export them beyond our borders. Where should we carry them? Would you receive them? Would you suffer your borders to be flooded with an irruption of all the colored people of the State of Maryland alone, much less of the entire South? Certainly not. Nor have we wealth or means to send them back to Africa. Do you expect us, by preaching abolition, to turn loose this numerous and dangerous class in our midst, with whom we cannot either socially or politically amalgamate? Preach it as you will, contend for it as you will, we *will not*, and we *cannot*. It is worse further South. There the evil would be greater in proportion. In the extreme Southern States it is in the proportion of nearly three blacks to one white man. I need not give you statistics upon that subject, none can dispute it. If therefore you of the North consider this an evil, then before you seek to abolish slavery in the South, in the name of God, invent a remedy and tell us how we are to get rid of this supposed evil! It will not be by emancipation. It must be by exportation, and where is the treasure with which it is to be done? But as I said, we do not argue these abstract questions out of the limits of our States. Gentlemen, you of the North have no right to ask us to emancipate our slaves. You would have as much right to go into the house of your neighbor, and pry into his domestic affairs, and tell him how he ought to regulate the various departments of his family; and I have no doubt if you were to do so with one of your neighbors you would be ordered out of the door, and very justly too. I will presently show you, that you, the people of Pennsylvania, have solemnly plighted your word, your moral character, and your honors, to the protection of this property. How have you done it?

In 1780, and before the adoption of the present Constitution, you had a right to say what you pleased, and emancipate every slave who might come into your borders, whether fugitive or not. Because you were then an independent sovereign State, having an exclusive jurisdiction, and not trammelled by any thing except the old articles of confederation, which were silent on this whole subject. What did you do? You adopted the present National Constitution. How did you adopt it? By compromise; by mutual concessions. There were many things in that Constitution which the South did not like, and there were many things which the North did not like; and yet, by a mutual surrender, by a common offering upon the common altar of patriotism and the American Union, all differences, all animosities, and all heart-burnings were buried, it was supposed, for ever. What are the stipulations of that Constitution? Why, that we of the South, most vitally interested in slave property, especially in some of the Southern States, where heat renders it impossible for white men to labor beneath the burning sun, we incur certain duties. We, of the South, agree on our part that we would give to Congress the power to prevent the importation of slaves into the United States from Africa; in other words, to abolish the slave trade. We agreed to abandon that. And that obligation on our part has been in good faith carried out. There is no southern statesman or State, that does not execute the bond and stipulation on their part. What was the counter stipulation? Why, that you, of the North, you of the non-slaveholding States, bound yourselves, as sepa-

parate communities, that the master should have his fugitive slave surrendered to him upon claim being made. And when you adopted that Constitution, in common with the other States, you gave your solemn pledge that this thing should be done. Now, what becomes of the moral view of this question? Is it not a question of contract? Have you not made the contract, and have you a right to observe one part of the contract, which benefits you, to the exclusion of the other part of the contract? I will show you, gentlemen, by the decision of the Supreme Court of the United States, a decision of the highest court in the land, speaking through Judge Story, himself a Northern judge, that this Union never could have been formed, without the adoption of the clause for the surrender of fugitive slaves; that "it was a fundamental article, without which, as an historical fact, the Union never could have been formed." For us the solemn inquiry remains, whether that Union which could not have been formed without the adoption of this fundamental article, can be now maintained without its religious and honest enforcement. Why, suppose, gentlemen,—and the law which applies to nations or to political communities as a moral law, cannot be different from that applying to individuals,—suppose two of you make a contract in which there are mutual stipulations, one party has his obligations to perform, and the other party has his obligations; and what would you say of the honesty of that one who having made this contract, should, because he did not like the stipulations upon his part to be performed, set up a higher law than the law of the contract, and say, "I am absolved in my conscience from this part of it;" and yet these doctrines are preached through your borders, and in this very court-room, by individuals who, I am proud to say, are not a majority of your citizens; and I do believe, that a large majority of the people of Pennsylvania are, in sentiment, at least, sound upon this subject, and opposed to these doctrines of the rights of conscience as against a solemn contract entered into by your forefathers, and assented to by you, as their successors. Why, gentlemen, unless every man has the right to sit in judgment over the legislation of government, and over and above the clauses of the Constitution; unless this can be made out, no man has a right to set up his conscience, and say he will execute just such laws as he chooses, and repudiate those he dislikes. If there be such bad citizens among you, it is their first duty to get rid of the Union itself; and if they cannot do that, let them, at least, fly to some other land, and there preach those higher law sentiments; that they can do, at least, without remaining here, to sow the bitter seeds which bring forth blood and massacre, and may, at some future day, end in civil war itself.

Now I will show you, gentlemen, what I stated to be the law. It is the decision of the Supreme Court of the United States, in Prigg *v.* the State of Pennsylvania, reported in 16 Peters, where the Commonwealth of Pennsylvania, through its legislature, submitted these questions to the Supreme Court of the United States, that they might be expounded by the supreme tribunal of the country. The legislature passed a law, and instructed her Attorney-General to appear before the Supreme Court and argue these questions. The case was between a citizen of Maryland and the Commonwealth of Pennsylvania. It was upon an indictment preferred against a citizen of Maryland for having been guilty of a crime in taking his slaves against State laws; and this your State submitted to the decision of that high tribunal. You went before the constitutional tribunal to draw from the very fountain of the law the true construction of that sacred instrument. What was the answer of that tribunal of your own selection? It was in the words of Judge Story, who delivered the opinion of the Court in these words; I read from page 611: "There are two clauses in the Constitution upon the subject of fugitives, which stand in juxtaposition with each other, and have been thought mutually to illustrate each other. They are both contained in the second section of the fourth article, and are in the following words: 'A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.'

'No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up, on claim of the party to whom such service or labor may be due.'

"The last clause is that, the true interpretation whereof is directly in judgment before us. Historically, it is well known, that the object of this clause was to secure to the citizens of the slaveholding States the complete right and title of ownership in their slaves, as property, in every State of the Union into which they might escape from the State where they were held in servitude. The full recognition of this right and title was indispensable to the security of this species of property in all the slave-holding States; and, indeed, was so vital to the preservation of their domestic interests and constitutions, that it cannot be doubted that it constituted a fundamental article, without the adoption of which the Union could not have been formed."

There is the Constitution, the organic law which rides over the legislation of Congress when inconsistent, and which rides over State constitutions and State legislation; and it is upon that fundamental law that southern property reposes with entire confidence. There the people of Pennsylvania, in the words of the Constitution, have solemnly pledged themselves, as parties to that compact, "that a fugitive from labor, or service, shall be delivered up, on claim of the party to whom such service or labor may be due." Before I read what the Court say in regard to to this matter, let me pause, and inquire what is the obligation which the northern States have assumed. Is it, as was contended by Mr. Lewis

to-day, merely an obligation to allow the owner of the slave to come and capture with his own hand his slave, and that the citizens of Pennsylvania have a right to be passive and stand by, and not assist; that the Southern master must come here, and with his own hand capture his slave? No, gentlemen; I say, according to the letter and the spirit of the Constitution, all that was designed at the time, however it has been perverted since, manifestly appears in the plain language of the article. It is this, that the owner of the fugitive from labor, may simply make his claim, and upon that claim the people of the north have bound themselves to deliver up the fugitive. The words are, "shall be delivered up." Who is to deliver him up? The people of the North; the people of Pennsylvania, when he is found in your State. Whenever a master shall come here claiming his slave, you bind yourselves to deliver him up. The master has a right to call upon the State and the people of Pennsylvania, as loyal citizens to the Constitution and Laws of the United States, as bound, whenever requested, to assist him; and to deliver up the slave. The Supreme Court in further exposition of that clause say that, "according to the Constitution, the master has a right to come into this State without process, without legislation on the part of Congress, and capture with his own hand, his slave, wherever he meets him, provided he can do it without a breach of the peace, or illegal violence." Now, I merely refer to this clause of the Constitution to show that it binds the citizens of Pennsylvania, and of every northern State, to some active duty; it prohibits them from being passive, and binds them, as loyal citizens of Pennsylvania, respecting the Federal Constitution, to deliver up the fugitive to his master; especially when he comes fortified with process issued under an Act of the United States.

Here, then, is the solemn decision of the Supreme Court of the United States, that this surrender of fugitive slaves constituted a fundamental article, without the adoption of which, the Union could not have been formed. Its true design was to guard against the doctrines and principles now promulgated on this trial. Now, gentlemen, that was the first great compromise upon this question—a compromise in the Constitution itself—and I call upon you and upon the counsel who will follow me on behalf of the defence, to point out the instance where the Southern States, and least of all, the State of Maryland, have been recreant to the stipulations of the Constitution in any particular, so far as these obligations rest upon them or her. Then the State of Maryland presents herself here with a clear conscience, has she not a right to ask the people of Pennsylvania to do unto her as she has done unto them? Has she not a right to call upon you by every consideration of a common country and Constitution, by every moral appeal, by every appeal to your honesty itself, to execute this contract! We desire it, gentlemen, not as a legal abstraction on the Statute Book—not as a mere moral principle in the Constitution—but we desire the enforcement of that Article as an active, living, practical right. We desire, and we say it in all friendship and in all candor that our citizens shall come into Pennsylvania as long as this Union lasts—as long as this Constitution remains unaltered and unrepealed—shall come into your State and be enabled to capture their property, and that it shall be delivered to them upon their claim being made; and more especially, that the citizens of Maryland, who come here to carry out this law, shall not be savagely butchered. That is one issue. But in carrying out that desire—in protecting our own citizens from that lawless and wicked faction, that would unsheath the sword of civil war; the State of Maryland does not desire that this man should be offered as a victim if innocent—that is another issue. I just now expressed it as my belief, that a vast majority of your people are in sentiment sound upon this great question; but, gentlemen, again I say it must be a practical question. Of what avail is it to us at the South, to know that a majority of the people of Pennsylvania, if it were submitted at the ballot-box, are in favor of respecting and executing the Constitution and laws of the land, if a small and miserable and traitorous faction can resist and annul the laws of the United States—if they are so active, so mischievous, so destructive, though in the minority, that they can nullify the will of the majority, and practically overthrow and defeat the process of the United States, what value is it to us to know that their course is not approved by a majority of the people? Put down these factions, overwhelm them with shame, disgrace and ruin, or you are not good citizens fulfilling the bonds that bind you to us of the South. Why, gentlemen, the counsel who spoke to-day, says, that the time will come when the South will herself desire to see the repeal of all those laws for the delivery of fugitive slaves; and that she will desire it, because the slave who has once tasted the sweets of liberty and returned to bondage, will preach liberty to his fellow-slaves of the South.

"Sufficient to the day is the evil thereof."

When the South is satisfied that it is her true policy, she will say so, and in the mean time she stands indebted to the gentleman for the advice he has given to her. We will judge for ourselves, and as long as we claim our rights, no one has a right to object that we do not know our true policy. I tell the counsel that the contrary is the result. I say this very fact of inticing and seducing slaves to escape from bondage to free States, and the struggles that we of the South have made to recapture our property, has retarded and put back that process of gradual emancipation which was going on some twenty years ago in the middle States of the Union. Young as I am, I can recollect the time, when leading men in Virginia and Maryland, openly declared the doctrine that in those States not too far South, and where the white man could labor in the open fields, beneath the summer's sun, there should be, if practicable, a gradual emancipation of the slaves. And I can point to the debates of the Virginia Convention,

of 1830 and '31, as a proof of the fact. This resistance to the rights of the South, what has it done? Where is the man *now* at the South, who dares, and I say it boldly, to preach such doctrines? No, the very effort to force this thing upon the South, has retarded and reversed the progress of public opinion. Instead of doing good to the slaves, so far as emancipation is concerned, it has hindered it, until there is a wide-spread conviction in all the South, that no living man will ever see the day when slavery will be abolished. Who have the slaves to thank for this, but their wicked friends and sympathizers at the North. Well may they say as General Jackson used to say, "save me from my friends, and I can take care of my enemies." That, gentlemen, has been the result; and when we are satisfied that we ought not to compel or ask for the execution of the guarantees of the Constitution,. because it is better to let our slaves escape by hundreds and thousands, and then not reduce them to slavery again, because they would sow the seeds of insurrection and servile war—we will adopt the advice of the counsel, and not till then.

Now, as to the danger to the Union—I do not come here to proclaim it—I have no authority from the people of Maryland, to speak for them upon so grave a question. I do not come here to say that the Union depends upon your verdict; nor to say that the Union is involved in the issue of this trial. I do not believe that any one event, that may be the event of a single day, or a single week, or a single month, can dissolve this Union as it now stands. But I do believe, that you can snap and rend asunder, one by one, the cords which bind it together; and, I believe, that from the very doctrines that have been preached and acted upon, by a portion of the people of the North, and the ultra-agitators of the South, I do believe the edifice of the Union, if not undermined, is at least not now, resting on as solid and substantial a foundation, as it was before the agitation of this question. Already have we seen that even the churches which were harmonious at the North and South—already have we seen that in matters of religion, there has been a sectional line drawn by this question, and churches have been divided. This is the very question against which Washington warned the people, "to frown down every attempt at sectional strife and agitation;" and, certain it is, if the people of Maryland, shall believe that a depraved public opinion in your State, has prevented the vindication of the blood of one of her innocent citizens, murdered upon your soil—that this vindication has been put off by the mere forms and delusive ceremonies of a trial; by merely summoning and impannelling a jury. If the people of Maryland shall believe, that no citizen of that State can follow his property into Pennsylvania, except at the peril of his life, and that when that is taken, no justice can be done to his memory—no vindication of the laws of the United States. Certain it is, that the moral charm is gone, and there cannot be that brotherhood of feeling and kindness of association, which has always characterized the people of Pennsylvania and Maryland. I am happy to say, that although we are border States, and have had cause enough to produce fierce and bitter animosity, yet, a kindly feeling has always prevailed; and I defy any one, to show a citizen of your State coming into Maryland, who has ever been treated with any thing but hospitality and friendship.

But, gentlemen, I pass from this consideration, and I pass from the solemn bond and covenant which your great forefathers entered into, and which binds you in common honesty as religiously as if you had with your own hands and seals accepted it; because you are the descendants of those forefathers, and you are enjoying the blessings which that contract has procured for you.

You are enjoying the blessings of this Union; daily and hourly enjoying them, and you are a party to the obligations and stipulations by which they were procured; therefore I say that you are bound morally, legally and politically by every one of its ties, and you will with pride and pleasure, I trust, enforce them. You will consider that without this stipulation, in the language of Judge Story, "we should have had no Union"—no star-spangled banner to float in triumph over every wave. We should have had no broad and renowned land; stretching from the shores of the Atlantic to the Pacific ocean. We should have had no beacon lights, shining from every mountain top, to give light to the oppressed of other nations, and to guide them to peace, happiness, and freedom. These things never would have been and cannot now be preserved and maintained without a religious, an honest, and faithful execution of all the covenants binding the several parties together. So long as you have a general government, that government is there for the purpose of enforcing the Constitution of the United States. And until you by treason, shall conquer and subdue that general government to your own ends and purposes, so long, I say, you cannot resist the stipulations and obligations of that Constitution without treason to the government.

Gentlemen, what is the duty of the government? It is there for the solitary purpose of enforcing the Constitution. That general government is the arbiter of peace and war. It has a power to marshal the whole forces of the nation in the execution of the laws of the Union. There is a solemn obligation upon that government to see that each and every clause is executed by force if necessary. And it is recreant to its obligations if it fails to enforce them in any particular whatever. That is the decision, gentlemen, of the Supreme Court, in the same case decided between Pennsylvania and Maryland, in regard to this very power of reclaiming fugitives from labor in Prigg vs. Pennsylvania, 16 Peters.

In other words, gentlemen, Congress has the power, according to the decision of the Supreme Court, "to exercise the power of protecting the rights of the owner of a fugitive slave, and of calling it into activity and prescribing the mode of its exercise, and under what circumstances it shall afford a complete protection and guarantee

to the right." In other words, Congress has complete jurisdiction over this whole subject. When Congress legislates and says the right may be executed in such a way, it is final, conclusive, and no State law can oppose it. If, therefore, Congress has legislated upon this subject, and said that the master shall be clothed with certain powers and process from the Commissioner of the United States, for the purpose of capturing his slave, and that there shall be no resistance, and that every good citizen of the United States shall, when summoned, aid in executing that process, I say it is binding. It is binding upon every good and loyal citizen; and no man has a right as long as he is an American citizen living under the "Flag of our Union," to say I reserve to myself and my conscience, the right of not assisting in the execution of this law.

Why, gentlemen, the whole sovereignty of your State, the whole power of the State of Pennsylvania, speaking through her Legislative Halls, cannot gainsay one tittle of that Act of Congress. If the Legislature of your State were to undertake to repeal one letter or clause of this "Act of Congress," and say that she reserved to her citizens the right to resist that mandatory clause in the Act of Congress requiring them to assist, that act of Pennsylvania would be unconstitutional. Such is the decision of the Supreme Court. I do not ask the conviction of Castner Hanway because he refuses to assist. I do not ask it upon such grounds as this. The refusal to assist is one thing. The actual *conniving, inciting, aiding, and abetting,* is another. But I only refer to that decision of the Supreme Court in order to put down and trample under foot, the doctrine which has been preached by one of the witnesses here, who came to vindicate the loyalty of Castner Hanway, and who said he was loyal but reserved to himself the right, when summoned in the name of the United States—the right of not assisting though he saw an officer of the United States threatened and menaced with death. A doctrine preached from the witness stand and echoed by counsel on the other side, Mr. Lewis; who now broadly takes the ground that Castner Hanway and all others had a right to refuse to assist, because it was repugnant to their consciences. Conscience!

Conscience, gentlemen, is the pretended justification for an American citizen to refuse to execute a law of his country, passed by his own representatives in the Congress of the United States. Because, I say, whether that representative votes for the law or not, it makes no difference. He goes there and takes his chance of getting the law to suit his views. He has the privilege of a voice in the passage of every law and the privilege of voting "aye or nay." He professes (and every man in the community professes) to be governed by the majority. If a wicked law should be passed, there is but one remedy, and that is in a constitutional way to procure its repeal. He has nothing of which to complain; it was passed by a body in which he had his representative member. Suppose this monstrous doctrine (for I call it monstrous,) is to be allowed, what is the result? It is that the general government has no power to enforce its laws, in any section where they are unpopular, unless she sends a regular army to accompany her civil process. She has not the power to summon a "posse comitatus," because the consciences of the by-standers may be against the law. Then the general government would require a standing army? And such a standing army! An army that would have to be stationed in every town and county, so as by a sufficient display of force to execute the civil process of the United States. Is that the sort of government we live under? A government of force and military terrors? A government which has no right to call upon its citizens to assist in the enforcement of its constitutional laws. Gentlemen, I have entirely misapprehended the frame and structure of our government if this be American doctrine, or any thing else but *damnable, treasonable doctrine.* As I said before, I do not desire, I do not ask the conviction of Castner Hanway, merely because he refused to execute that law, though it was a violation of his duty as an American citizen. Though he was disloyal to his country, though convicted of being dis oyal to his own country, by his own confession, I say, acquit him form the charge of treason, if he has not done any thing beyond this. If that be your view of this evidence, acquit him, and let him go forth as a violater of the law: a traitor in heart, if not in act. But, gentlemen, I shall, I think, when I come to review the powerful combination of crushing testimony in this cause, (corroborating Kline upon every material particular), I think I shall show you that this man, (who is here confessed to be opposed to this law, and to have refused to assist the officers of the United States); that this man did not confine himself to mere sympathy with the fugitive slaves, that he did not occupy the position of being merely passive, but that he did then and there connect himself with an organized band, which had been formed there for treason. But suppose he was there as a spectator, and that he there first connected himself with an organization formed for the purpose of resisting the law? Is he not as guilty as the rest? But he had no arms in his hands. What of that? The colored people then and there armed were his instruments of war; they were his arms; and I should have thought far more of Castner Hanway and Elijah Lewis, if, while sympathizing with these blacks; if, while determined to nullify and resist this law of Congress, they had put on their armor, and led their soldiers to the fight. They would have been heroes in their way, and they would have resisted the law plainly, boldly, and openly. But to go there, (with no arms and weapons on their persons,) to incite an ignorant and infuriated horde, who are there for the purpose of treason, murder, and robbery; I say, this is less manly, than if they had led them armed from head to foot. Why, gentlemen, did he go unarmed? Because he fancied himself in security. He fancied he could go there and preach treason to those men who stood around armed and ready for their bloody work. He could excite them to treason and vengeance *with impunity.* He knew

that they wanted white advice, and actually in the morning, before the Gorsuch party had arrived, they had sent Clarkson to get white advice, white counsel, and whites to be present. I say, a man who would do this, incite them by speeches, and encourage them by declaring they had a right to defend themselves, and if the law should be sought to be enforced blood would be shed, and that the officer had better go home, is far guiltier then the armed negroes. If you believe he incited them by word, speech, or gesture, then he has done more than merely refuse to assist. He has become a conspirator. He has connected himself with them, and all their acts are his acts, and all their intentions are his intentions, and I shall have no difficulty in making that law out, because it has been adjudicated in this Court.

I shall argue (in the first place), that there is overwhelming circumstantial evidence to demonstrate Hanway's implication in the previous conspiracy. That it is not to be expected (in a case like this) that direct proof shall be brought, where the whole region is infected, and where every white man in that immediate neighborhood (with the exception of Miller Nott), is leagued with the traitors. The whole neighborhood were not only disloyal but wanting in common humanity. And it is melancholy that a whole neighborhood should be thus stigmatized, and yet there are facts which fully justify the charge. I say in a neighborhood of that kind (with facts and evidences of that character, to which I shall refer), it is not to be expected that we shall find in that horde of traitors, voluntary witnesses to implicate directly one who sympathizes with them, and thinks and feels as they do. What, gentlemen, because a whole county, a whole township, or a whole neighborhood, are involved in plotting treason; because no eye-witness can be produced to prove their treasonable meetings, cannot treason be proved, cannot combination and wicked conspiracy be established, as any other fact in the law, by circumstantial evidence? If you see the stream which comes from the distant mountains, swollen and leaping along as if a deluge were pouring its waters through its channel, do you not know that the snows have melted at its source, and the rains have descended from the heavens? Cannot you judge the cause from the effect? And when you see acts done by the prisoner, which show you that he was ready to leap upon his horse (as rapidly as possible), and going to the ground immediately proceeded to incite those who are assembling by concert to resist the laws. When you see these things, can you not infer (notwithstanding the evidence of Lewis) thet he went there by pre-arrangement, and that he was known by the colored people as a man who would stand by them, in their resistance of the laws. When you see them hail his presence with a shout, and see him stand by and read the process of the United States, saying not one word to these ignorant, misguided individuals, warning them of their danger, "though he had come to see justice done" to the blacks, and yet does them the injustice of not warning them that they were about committing murder and treason, by resisting the laws. When I say that he would not tell these ignorant people, who were about to imbrue their hands in innocent blood, "you are doing wrong, here is authority from the United States." When you see a man (according to his own witness Lewis,) not saying one word to save his dear colored friends from the guilt of murder, I say it is passing human credulity to say that you cannot infer in all that a feeling of hostility to the law, and an intention to resist it?

It being three o'clock, Mr. Brent here discontinued his argument until Monday, the 8th Dec., A.D. 1851.

The Court is adjourned.

Philadelphia, Monday, December 8th, 1851.

COURT OPENED AT 10 O'CLOCK.

PRESENT, JUDGES GRIER AND KANE.

The list of Jurors who were discharged until to-day, not having been impannelled in the present cause, is called.

The defaulters were then called.

All the Jurors impannelled in the present case, present.

Hugh Campbell and Geo. W. Toland are excused for the term.

A JUROR. May it please your honors, the opinions I expressed and still hold, I feel conscious will disqualify me from serving as a Juror in this case, and will, therefore, ask to be dismissed finally.

JUDGE GRIER. Are you so determinately opposed to capital punishment that you could not find a verdict of guilty?

JUROR. No, sir; it is with regard to opinions that I have formed and expressed.

JUDGE GRIER. Such as would prevent your acting as an impartial Juror?

JUROR. I think so.

JUDGE GRIER. Well then there is no use for your stay here. What is your name?

JUROR. Hugh Ross.

MR. D. P. BROWN. Had not your honor better prove it by the regular test?

JUDGE GRIER. I suppose the Juror would answer the same on his oath as he does now.

MR. BROWN. But it may produce great difficulty on the part of the United States. Your honors will remember the case of Charles Pleasants; and I merely make the suggestion, subject to the decision of the Court.

MR. STEVENS. I think Mr. Ross was set aside on that account, when he was asked before.

MR ROSS. Yes, sir; and I should have taken the opportunity of stating my opinions on that occasion, but could not.

JUDGE GRIER. Under such circumstances we cannot give a Juror right of absence. If you are called, you may be challenged on account of those particular opinions. We cannot help it.

MR. BRENT. May it please the Court: Gentlemen of the Jury, I omitted on Saturday, to notice an appeal made to enlist your prejudices against this prosecution by Mr. Lewis, one of the counsel for the defence, who seemed to bring here a sort of

indictment against the Southern States, in respect to our treatment of slaves and free persons of color. He stated, gentlemen, that by the laws of some Southern states, free people of color were arrested and sold into slavery for the payment of their jail fees.

Now, gentlemen, is there such an issue before you to try? Have you aught to do with that, even if it were true? I can only say, speaking for my own State, gentlemen, that no such barbarous statute prevails in the State of Maryland. There we mingle with the code and institution of slavery, every consideration of humanity, nor do I believe such a law prevails any where in the South. That gentleman also complained, that colored citizens of Pennsylvania were excluded from settling in the Southern States. Why, gentlemen, do you recognize them as citizens of your State? Do you, yourselves, recognize your colored population as citizens of your State, in every legal, constitutional, and political sense? Do you not yourselves reserve the right, whenever you think proper, to prevent the immigration into your State, of free people of color from other States? At this very moment, is it not a wide and spreading sentiment in your own State, that legislation is necessary to arrest this growing evil? We of the South and of Maryland, do claim (knowing what an incubus upon the South it is,) we do claim a right to prevent immigration of free people of color into our States. It is a right that you yourselves, may some day find necessary to your own well-being and protection. That gentleman also said, that the Union is not to be dissolved by resisting these Acts of Congress, or by refusing to execute them, and that the eternity of the Union rests upon a broader and stronger basis, than any such treasonable apprehensions. When I hear this sort of language, it seems as Patrick Henry said in the times of the Revolution, "to be like one crying Peace! peace! when there is no peace." I tell you, gentlemen, much as the Union is venerated and beloved, North and South, East and West, there are some things that may precipitate ruin and disaster upon that Union. I tell you, that whenever the day shall arrive, that any considerable portion of the people, (and particularly the people of the South) shall be satisfied, that the constitution of your country is but idle parchment; that the bond of the Union is but a bond of fraud and injustice; I tell you, in "that dreadful day of wrath," there can be no longer Union. When that conviction settles and fastens upon the minds of the South, you will find them standing as a unit to resist injustice and oppression; and they would be but cravens in spirit, if they did not maintain the rights which had been handed down to them by their Revolutionary forefathers. We all cherish and love the Union. We all agree at the South, that if the Union is to be dissolved, and such a question is to be agitated, the sin is not at our door, but it is upon the conscience of a miserable and wicked faction in the North, who are seeking to rend asunder the bonds of this Union.

These colored people, who embrue their hands in the blood of Southern masters, coming here, under the flag of the Union, and the charter of the constitution, to reclaim their property, these are but mere instruments, and the anathemas of heaven and of man should not rest upon them the ten thousandth part that it does upon the white men, who have incited them to these acts, and who stand by and harken them on to their bloody work. Nor does the fearful responsibility devolve even upon these white men, with the same damning force that it does upon those who in high places, who in the Congress of your Nation, and in the pulpit, preach treason, and incite men to rebellion, which they dare not practice themselves. They are the objects for the execration and denunciation of the patriot, and every sound lover of the American Union.

Gentlemen, should that day which we all deprecate, should that day of disunion arrive, what wou d we not see? The blackness of desolation would reign over these smiling plains, which now invite us to peace and fraternity. And though the North be far mightier physically than the South, yet I tell you, gentlemen, you are not strong enough to carry on a war of invasion upon the weaker South. And if you could conquer and subjugate your seceding brethren, could the sword reunite the broken fragments of a dismembered Republic? Let me read upon this subject, (the utter impossibility of again reinstating this glorious Republic when once destroyed) let me read the thoughts and feelings of the greatest mind which now lives upon American soil—I mean the mind of Daniel Webster. I will read you what he said many years ago upon this very question.

"Other misfortunes may be borne, or their effects overcome. If disastrous war should sweep our commerce from the ocean, another generation may renew it; if it exhaust our treasury, future industry may replenish it; if it desolate and lay waste our fields, still, under a new cultivation, they will grow green again and ripen to future harvests. It were but a trifle, if the walls of yonder Capitol were to crumble, if its lofty pillars should fall, and its gorgeous decorations be all covered by the dust of the valley. All these might be re-built. But who shall re-construct the fabric of demolished government? Who shall rear again the well-proportioned columns of Constitutional liberty? Who shall frame together the skillful architecture which unites National sovereignty with State rights, individual security, and public prosperity? No, gentlemen, if these columns fall, they will not be raised again. Like the Coliseum and the Parthenon, they will be destined to a mournful, a melancholy immortality. Bitterer tears, however, will flow over them, than were ever shed over the monuments of Roman or Grecian art; for they will be the remnants of a more glorious edifice than Greece or Rome ever saw—the edifice of Constitutional American Liberty."

Let me also read to you, gentlemen, a concluding passage from Washington's Farewell Address. He says,

"The basis of our political system, is the right of the people to make and to alter their

Constitutions of Government: but the Constitution which at any time exists, till by an explicit and authentic act of the whole people, is sacredly obligatory upon all. The very idea of the power, and the right of the people to establish government, presupposes the duty of every individual to obey the established aovernment. All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive to this fundamental principle, and of fatal tendency."

And yet we have fallen upon evil times—upon wicked times—when this doctrine which the Father of our Country left us as a sacred legacy to posterity, is here in the very building where the "Declaration of. Independence" first went forth to cheer and enlighten mankind, when that doctrine is here denied, scoffed at and denounced by counsel. When counsel get up in this Court of Justice, and proclaim, as Mr. Lewis has done, that it is not the duty of an American citizen to enforce the Constitutional laws of the country, or that he is not bound to assist in their execution. But, gentlemen, why do I advert to all these things? Why did my distinguished colleague in this prosecution, the learned District Attorney for the United States, why did he enlarge upon the blessings and glory of the Union, and the disasters which would result from its destruction? Is it to make you swerve one hair's breadth from the straight line of your conscience? No, gentlemen. It is but to show you your responsibility, in order to nerve you to the more steady, scrupulous and faithful discharge of the solemn duty which devolves upon you in that jury box; and not, gentlemen, to ask that one of the hairs of the head of that man shall be unjustly sacrificed, even to save the Union, if it depended on his acquittal. I say therefore to you, tremendous as is the responsibility which rests upon you, and though your verdict will reverberate from the wintry shores of the Aristook river to the golden gates of California, stand up firm and erect, looking not to the right nor to the left hand, but hold aloft the golden scales of justice with unshaken nerves, and in that great balance, weigh on the one side, Castner Hanway the living man, and in the other side Edward Gorsuch the dead man; then look and see which way the beam inclines. Allow me, upon this subject, gentlemen, to quote to you the language of Judge Patterson, a distinguished Judge of the United States Court; now deceased. In regard to the consequences which depend upon your verdict, the learned Judge says, "The consequences are not with the jury: it is their province to do justice; the attribute of mercy is placed by our Constitution in other hands."

I also will read what is said by Judge Iredell, on the trial of Fries' case, known as the Northampton insurrection. He says, gentlemen, "This is an issue of an aspect the most awful and important that any juror can ever be called upon to determine. It is your duty to divest yourselves of all manner of prejudice and partiality, one way or the other. Dismiss from your minds, as much as you can, all which you might have heard or thought on this case before you came into this Court, and confine your opinions merely to the evidence which has been produced. No extraneous circumstances whatever ought to have the least weight with you in giving your verdict; you ought not, and I hope you will not, take into your consideration at all, whether the safety of the United States requires that the prisoner should suffer, on the one hand, or whether on the other, it may be more agreeable to your feelings that he should be acquitted. It is solely your duty to say whether he is guilty of the crime charged to him or not. No man can conceive that the interest of any government can possibly make it requisite to sacrifice any innocent man; and I can rest perfectly satisfied, which I have no doubt you also are, that this Government will not, and God forbid any considerations whatever should ever influence such an action."

Therefore, I say to you, gentlemen, great as the consequences are, and although your verdict may have the effect perhaps of kindling into fiercer flame those fires which are already consuming our political edifice, or on the other hand, it may glance like the sunbeam of a halcyon day, imparting life and peace and hope to the troubled hearts of our countrymen, yet you have nothing to do with such consequences. The responsibility will not be with you—You are not responsible for those vast consequences.—Nor will you be responsible for the more solemn consequences to the prisoner at the bar, (involving his life itself,) if you base your verdict upon pure hearts, truth and eternal justice. Gentlemen, why is punishment inflicted by human laws? Why does man take upon himself to arraign at the bar of justice his fellow-being, and to pass sentence of life or death upon that being? It is for the peace aad security of society; it is part of the great right of self-preservation and self-defence. I will show you that this is the ground upon which it is put according to the opinions of able jurists. The same Judge, Iredell, in Fries' trial, says, "A great and important end of bringing persons guilty of public crimes to justice, is to preserve inviolate the laws of our country. Men who commit crimes ought to be punished; otherwise, no safety or security can be had." What shield then has this prisoner to which he can look for protection against the accusation of this evidence? None, I say, unless it can be found in the law of the case. And yet, gentlemen, he has come into this Court, with a shield hanging on his left arm, to which you as jurors must be blind and insensible.

Never before have I seen or heard of a prisoner standing up for arraignment, side by side, with his devoted and affectionate wife. For that wife, gentlemen, I have a sympathy as deep, a sensibility as profound, as any man can have. But I would ask you, what have we in this court of justice, to do with such tears of sympathy? At the vestibule of this temple of justice, we

must divest ourselves, as far as possible, of every feeling and sympathy of our nature, (though they be the most honorable, the most commendable,) which are calculated to unnerve our hearts, when called upon to the performance of high and solemn duties. Gentlemen, the afflicted lady of this prisoner, for her conduct, has my admiration, my respect. But, what has taken place in the public view of this jury and this court, I have a right to comment on, if possible to cross the spell of that female influence, which is more potent than the eloquence of counsel. I regret, I deplore, gentlemen, that the affectionate wife of this prisoner, is called upon to partake the bitter fruits of the seeds which he has sown to the winds. He had a wife, and he had a home. If he were worthy of that home and that wife, and that wife's love, why is he found with the rising sun, the welcomed friend, if not the acknowledged leader of a band of murderers? Why does he leave the arms of that devoted wife, in order to go forth, to aid and incite a gang of miscreants, to acts of lawlessness and bloodshed. It always will happen, that those who indulge in such things, who go forth with treasonable purposes in their hearts, will find, that their acts in all their dreadful consequences, come home, "like young birds, to roost," and that the innocent members of their family are afflicted in mind and feelings, by the consequences of these acts. What, gentlemen, are we to be told for one moment, that this prisoner is not to have justice meted out to him, because, he has a devoted, loving and trusting wife? If that be human law and justice, then jurors should be sworn to try the cause by the merits and demerits of a man's family, and not upon his own merits or demerits; and the consequence would be, that you would send the solitary and isolated criminal, to a speedy doom; because he had no loving partner to allay his guilt, while the as guilty wretch will laugh at jurors, and courts of justice, in the security of that influence which protects him, in the form of an affectionate and interesting wife. Have not criminals gone before Castner Hanway, and perished upon the scaffold, and in the penitentiary, though surrounded by tears and broken hearts, as with a rampart of defence. But, this is a one-sided view of the picture however. Had Edward Gorsuch no wife, who, as a widow, is now mourning the loss of the lover of her youth, and the prop of her declining years? Castner Hanway can stand by the side of his wife in a court of justice, but there is no Edward Gorsuch to stand by the side of his widow. And before Castner Hanway should be allowed to appeal to the sympathies of a jury by such considerations, he should at least have striven to save Edward Gorsuch's life, for the sake of his wife and children. But, this is not the issue which you are sworn to try. This is not the mode by which it is to be tried. I say, that Castner Hanway has declared his willingness, to be tried "by God and his country;" which country, you are. A true-hearted man would require no such considerations, and no such false sympathies. He would desire to be tried by the merits of his defence. He would not distrust the intelligence or integrity of the jury. There are other and stranger things which have occurred, and marked the progress of this trial. We have it in evidence, from the witness stand, that two important United States witnesses, Peter Washington and John Clark, were in prison as witnesses—that on a certain morning, the witness waked up, and found his companions gone. No bolt or bar broken, but spirited away, as if by magic, and they have never been heard of since.

We have another striking illustration of the tricks of these secret magicians, and one which has elicited remarks from the bench; one which occurred in your very presence. A witness for the United States, who had thrice sworn distinctly, once in Christiana, once at Lancaster, and once before the Grand Jurors of this city—that witness, Harvey Scott, is brought into Court on the part of the United States. The counsel for the United States, acting on the presumption that the man would make the same statement which he had always made, placed him on the stand; he confesses his perjury, and acknowledges that he has thrice perjured his soul, that he was not on the ground of action, and knows nothing about it. Gentlemen, far be it from me to impute this to the defendant's counsel, or even to the defendant. I acquit them all of having tampered with that witness. But that some artful, designing, reckless, and unprincipled scoundrel, has tampered with him, I verily believe, and no man who understands human nature, can fail to detect it. If he were frightened at Christiana, was he frightened at Lancaster? Was he frightened when he came before the Grand Jury of this city, and reiterated the same evidence? What sort of fear was that, gentlemen, which perverted his forked tongue three times? Would he not have been safe, if he had told the learned District Attorney, that he knew nothing of this matter, and could not testify to it. You must believe it was a lying pretence, put in his mouth by some artful, and designing scoundrel. Allow me, before proceeding more particularly to discuss the facts of the case, to review the conduct of the neighborhood: that sweet and peaceful valley, which has been the theme of so much eulogy on the part of counsel for the defendant. I thought of the "sweet vale of Ovoca, in whose bosom the bright waters meet," where mingled peace and harmony dwell, and where no rude passions could enter to deface the earthly paradise. This is the elysium which has been painted before you, a spot of peace, a garden of happiness, invaded for the first time, ruthlessly, by the southern master, claiming his fugitive property. Now for the honor of our country, and the honor of the State of Pennsylvania, and the honor of Lancaster County; and most of all, for the honor of Sadsbury township; let us see what the people of that happy valley have done. How they have discharged the duty of patriots and American citizens, we will not ask; but how have they discharged the common duties of humanity! What do we see? We behold Elijah Lewis walking calmly away, when he saw the difficulty was about to begin. When he is asked

to come and succor a wounded man, (this is his own admission,) he walked away deliberately, and he could give no reason for such conduct, except the miserable lie, that he felt he was in some danger himself. And yet we find one true hearted man, (as there was one righteous man in Sodom,) so in this traitorous valley, we find Miller Nott.

He did not consider his life in danger. He told the infuriated negroes, a few moments afterwards, when marching up to the wounded man, Dickinson Gorsuch, helpless and unprotected, riddled with shot, and bleeding at the mouth from his lungs, he told Clarkson to save his life; and at the third time, told him to save the man, or mind what was before him. And he did save his life; and Dickinson Gorsuch, to this day, stands indebted to Miller Nott, and him alone, for the salvation of his life. Elijah Lewis turns his back upon the wounded man and his cry for help, and would not succor him; and he comes before the jury with the wretched lie in his mouth, that he was afraid of his own life; though these were his own friends, though Clarkson, their leader, had been to his house early that morning, to ask him to see that justice was done. This man, who coolly turns his back upon his victim, and walks away; gracious heavens! has that man one human feeling in his breast? has that man a desire to save human life? Let Dickinson Gorsuch have been black, and covered all over with crimes; let him have been a slave-catcher, or the son of a slaves catcher, to use the cant phrase, if he were the veriest criminal in the world, could any man have done more to disgrace his species, than Lewis did, leaving him in solitude and misery to die? What next? There arrives on the ground, a few moments afterwards, this Scarlett, who, instead of being Scarlett by name, should have some name which would stamp him with the diabolical blackness in which this evidence paints him,—what does he do? Dickinson Gorsuch has testified to it, and the counsel for the defence do not dare to gainsay what he has stated. What does he tell you? When he recovered his consciousness, after having rolled five or six feet in his agony and pain, from the shade of the oak tree, under which he had been placed by Kline, he saw Scarlett standing near him, looking on. He asked him to hold his head, and to bring him water. He gave him no answer. He continued to implore him until, finally and reluctantly, he did go, and brought him water. Why did he go? Does he deserve credit for it? No. gentlemen. He saw the victim of that conspiracy, which I will presently show you he had been active in organizing and arranging for this bloody work. He knew one man had already departed to eternity, and saw the other struggling for breath and life. I have no doubt his fears smote him, for conscience he had none, and he does reluctantly go and get water. How different the case of Miller Nott, and his son John Nott. They required no beseeching, no importuning. The father arrests the negroes who were about to murder Dickinson Gorsuch, and the son goes to get water and an umbrella, and shelters the head of the almost dying man from the summer sun. What next? The dead body of old Mr. Gorsuch is not treated with decent attention. Will you believe it, gentlemen, that in a Christian community, a community who profess themselves to be, *par excellance*, philanthropists towards all mankind, this old man's body is suffered to lie there for two or three hours in its weltering gore; and when we find that body, and examine it, the dead man has been robbed of every dollar of his money. This citizen of Maryland who was the leader and head of the party, who, doubtless, had means, who, according to the evidence, is shown to have paid more money to two of the officers who went up in company with Samuel Williams the informer,—I mean Tulley and Agan,—that man is found without a solitary dollar in his pockets, when they are examined some two hours after his death, according to the testimony of Louis Cooper, the son-in-law of Elijah Lewis. Robbery of the dead! These are the high and holy patriots; heroes of that race who strike for the glorious principles of liberty, and yet are not above robbing the dead. What next, gentlemen. Why, Joshua Gorsuch, who had run the gauntlet of a line of negroes striking him with clubs over the head until, according to Rogers, one of the defendants witnesses, he is seen staggering along the lane, and falling on his knees as he ran before the infuriated blacks. Why was not that man invited into his house for shelter by Rogers, who saw him thus staggering and falling on his knees? Mr. Joshua Gorsuch tells us, that not liking the appearance and conduct of Rogers, it induced him, wounded and exhausted as he was, to fly to the woods for refuge, rather than to the house of Rogers. He and Kline meet in the woods; they travel on until they come to a store; this wounded man who had lost his hat, buys another at the store, and asks for a conveyance. He is desperately wounded and his strength nearly exhausted; there is a man standing at the door with a wagon, and he says he will take him to Penningtonville, a distance of a short mile, for a dollar. He gives the dollar; the man thinks a moment, and then returns the dollar back, and says he cannot take it, and he cannot give him the conveyance. What sort of a man was that? What sort of humanity is that? And these two men, Kline and Joshua Gorsuch, fatigued and exhasted, and one of them wounded almost to death, from the effects of which wounds he had to remain at home afterwards for four or five weeks, incapable of attending to business; they are compelled to walk that mile, and get to Penningtonville as they can.

What next? We come to Castner Hanway's conduct? According to his own witness, Lewis, according to all the witnesess in this case, he never said one word to arrest these negroes before the mischief was done. Though he could afterwards say, "Boys, don't fire;" could call them "boys," in a familiar way, when they were turning their fire inconveniently near to him; yet not one word to forbear, before the first murderous attack. He did not say, "Mind what is before you," as Miller Nott did. No

such word comes from his lips, but he slowly wheels his horse and calmly and deliberately gazes upon this bloody scene. Dr. Pierce is flying, the erring ball has passed through his hat, just grazing his head; Joshua Gorsuch is there too, staggering along as he best could, they both apply to Castner Hanway to allow Joshua Gorsuch to get behind on his horse. Does he do it? If he was a good Samaritan, or a good citizen, if his heart was not with the murderers, would he not have taken that wounded man on his swift horse, and spurred away with him into safety. Though he did turn around when the negroes were about to fire, and Dr. Pierce, their target, was hiding behind his horse, and say, "Boys, don't fire." Yet he had the opportunity of taking Joshua Gorsuch on his horse and save him, it would have been the work of an instant, but he gallops away, leaving Dr. Pierce and Joshua Gorsuch to their fate. Nothing but the interposition of Heaven, nothing but Providence itself, saved the lives of those two hunted men. Thus we see the two parties. Elijah Lewis going towards the South, and coldly turning his back on the wounded Dickinson Gorsuch; and Castner Hanway going to the North upon his horse, heartlessly flying from two wounded men, and saying, "I can do nothing for you." Is that all? What am I to say about the worshipful squire? A man in the commission of the peace, one Squire Pownall, who, according to the testimony of Henry Birt, one of their own witnesses, met Kline at the Brick Mill, which I believe is Hanway's mill. Kline was flying from the place and there meets Squire Pownell, and has a conversation with him. I will read the evidence upon that point to show that I make no statement that is not verified by the evidence. Here is the testimony of Henry Birt, showing that Kline there told Squire Pownell of these men being wounded, and I will read it.

"He (Kline) came along by the mill, and stopped when he was opposite the mill. First, I believe he inquired the way to Penningtonville, and Thompson Loughead directed him on the way. He came over there; he was a little hard of hearing; he came over to the mill to hear what we had to say, and we told him the way, and he said there were two men laying over there at the house, badly wounded, and particularly a young man laying up in the woods, that he thought would die, and he wanted to get a conveyance to take them to the railroad. Thompson asked the reason why they stayed so long until these men were wounded. Kline remarked that he wanted to withdraw but they would not mind him." He then goes on to state that Squire Pownell was present at this conversation.

What does this prove? Why it proves that Squire Pownell was at the mill, and heard Kline say, that there were two wounded men, and that he wanted a conveyance, one of whom he said was in the woods and he thought would die. What did Squire Pownell do? Knowing that Kline was a witness to this transaction, hearing two men had been wounded, what does he do? Does he carry him along to take his deposition, issue process, and arrest the murderers? No, he lets Kline go on his way to Penningtonville, and rides on to Parker's house. He is there at 9 or 10 in the morning and sees the dead body; and Elijah Lewis says that he went there at 10 o'clock and saw Squire Pownell there. Elijah Lewis was also a witness. What does Squire Pownell do? He omits to take the affidavit of Lewis as he had done with Kline. About 10 o'clock they take the dead body in the dearborn of Mr. Cooper to Christiana, and there they hold an inquest. Thus we see Squire Pownell, in the commission of the peace, recreant to his duty; allowing murder to be committed openly in the neighborhood; knowing who are the witnesses, hearing the words of Kline at the mill; but standing with folded arms, and suffering the men principally guilty of the murder to escape.

Is this conduct befitting a magistrate, and has he been put upon the stand by the defence to explain his conduct? There is not one word of explanation to be given, but he stands before the public and this jury as unworthy to bear the commission of a justice of the peace, and as a sympathizer with the negroes in all their crimes.

What next? We come to Dr. Cain, a physician of the neighborhood. He is a witness upon the part of the United States, and he is one of those men who upon oath will tell the truth. What does he tell? Enough to damn himself. He had heard about six o'clock in the morning, that there had been a fight at Parker's house, and in the forenoon sometime, he heard that a man had been killed in the fight. "Well, Doctor, after you heard the man was killed did you dress the wounds of any colored persons that day?" "Yes, after I heard of this, I extracted balls from the arm of one negro, and from the leg of another." "Did you ask how they got those wounds?" "No, I asked no questions." "Who were these men?" "One of them was my tenant, and the other was some friend of his that came there to his house." "What became of these men, and did you give information about them?" "No, I did not, though I knew a man was killed, and had extracted balls from two men which they must have got in that fight; no reason to believe they got them anywhere else, yet I took no steps for their arrest." What is the consequence? That evening his house has no tenant; they have taken the wings of the morning and have flown away, so that they have never been heard of since. Why did these squires and doctors—why did these other men who ought to be respectable tillers of the soil in that neighborhood; why does every man within the range of that happy valley as it has been called—why are they all thus recreant to their duty, to the laws of their country, and of humanity? Because there is a colony of runaway slaves there; because that community (and I boldly charge it) are not even spurious philanthropists or crazy fanatics, but because they are there in the enjoyment of the labor of these runaway slaves to the exclusion of white labor; they get it cheaper than they could white labor; and it is a mercenary motive on their part—a base, sordid motive: that is their philanthrophy and friendship to colored people.

But let me come to the darkest portion of the

conduct of that neighborhood; let me come to the grand finale, fit to crown so much turpitude and wickedness—so much traitorism and so much disgrace. I will read you, gentlemen, this precious inquest, drawn up by the hand of Squire Pownell himself, and signed by twelve good and lawful men of that community. Now what does this say. I will read it to you as follows:

Lancaster County, ss.

An inquisition indented, taken at Sadsbury township, in the county of Lancaster, the 11th day of September, A.D. 1851, before me, Joseph D. Pownell, Esq., for the county of Lancaster; upon the views of the body of a man, then and there lying dead, supposed to be Edward Gorsuch, of Baltimore county, Maryland, upon the affirmations of George Whitson, John Rowland, Osborne Dare, Hiram Kinnard, Samuel Miller, Lewis Cooper, George Firth, William Knott, John Hillis, William Milthouse, Joseph Richwine, and Miller Knott, good and lawful men, of the county aforesaid, who being duly affirmed, and charged to inquire on the part of the Commonwealth, when, where, and how, the said deceased came to his death; do say, upon their affirmation, that on the morning of the 11th inst., the neighborhood was thrown into an excitement by the above deceased, and some five or six persons in company with him, making an attack upon a family of colored persons, living in said township, near the brick mill, about four o'clock in the morning, for the purpose of arresting some fugitive slaves, as they alleged. Many of the colored people of the neighborhood collected, and there was considerable firing of guns, and other fire-arms, by both parties. Upon the arrival of some of the neighbors at the place, after the riot had subsided, found the above deceased laying upon his back or right side, dead. Upon a post mortem examination upon the body of the said deceased, made by Drs. Patterson and Martin, in our presents, we believe he came to his death by gun shot wounds, that he received in the above-mentioned riot, caused by some person or persons, to us unknown.

[Signed by all the jurors.]

Now what is the oath they all took? It was to inquire on the part of the Commonwealth, when, where and how the said deceased came to his death—that is the form of the oath the law imposes upon them. They are *sworn to inquire.* What do they do? They examine no witnesses except the doctors, who for the sake of science and surgery, made a *post mortem* examination, and find out that the man who had been riddled by balls and shot, and beaten over the head with corn-cutters and clubs—wonderful to say—by the science of Dr. Patterson and some other doctor, has been found to have actually died from that violence. Though Elijah Lewis, a man living in that neighborhood, saw all or a principal part of the transaction—though Castner Hanway saw the transaction—though Mr. Kline had seen it—*had* been one of the party—though he had travelled from Penningtonville and got to Christiana, in time to be present at the inquest, and offered himself to be sworn, yet this jury, sworn and affirmed to inquire when and where and how this man had met with his death, did not examine a solitary witness. Lewis Cooper tells you about that. He is the son-in-law of Elijah Lewis, and is one of that inquest. He said the jury did not want to hear Kline, because they would not believe one word that he might say. "How is that, Mr. Cooper? You didn't know then that there were twenty-nine witnesses in the City of Philadelphia, who would swear that Kline was not to be believed on his oath—you didn't know any thing about his general character for veracity?" Ah! but then, "he had been telling various tales there that morning, and none of the jury would believe him, and therefore we would not hear him." Is not that in the first place, a monstrous thing, that jurors would not hear a man making statements on oath—when summoned and sworn to inquire, will not hear the man on oath—because they have formed and prejudged the case before they were impannelled, from hearing him talking. Gentlemen, this is not so! The various tales Kline had told, and which, Lewis Cooper says prevented the jury from believing him, were not various and contradictory—but the true reason was, because he was a stranger there, without friends, and his party had been driven from the ground, by the negroes and their white allies—because he there, publicly and boldly charged Elijah Lewis and Castner Hanway, before their friends and neighbors, with aiding and abetting the murderers; and the consequence was, that a jury on which was a son-in-law of Mr. Lewis, and a Squire Pownell presiding over them, did not want to hear his evidence, when they might either be forced to commit perjury, or find that Castner Hanway and Elijah Lewis had incited to this murder. Nobody examined as a witness, and yet this jury that had no evidence but a *post mortem* examination, did not content themselves by saying he was murdered by violence, but go on to libel, without evidence, the memory of Edward Gorsuch, a respectable citizen of the State of Maryland—coming there under the invitation of the laws of the United States, under the sanction of the Constitution of the United States, and armed with the process of a Commissioner of the United States, and having with him an officer of the United States, though he be Henry H. Kline, who has been stigmatized in this Court — armed with that process, and accompanied by that officer, I care not what may be Kline's character, he stood as proud a representative of the dignity of the Union, as if he had been General Winfield Scott, at the head of his army. What did they do? Without evidence they wickedly asperse and libel the character of Edward Gorsuch. Let me read it to you. "They do find that the deceased came to his death, by a riotous attack on a family of colored persons." This jury, upon their oaths and without evidence, have stigmatized Edward Gorsuch, with having participated in a riot—"he made an attack upon a family of colored persons, about four o'clock in the morning, where it was alleged fugitives were." What does that mean? Does it mean any thing? It means that under the false pretext of seeking fugitives slaves, Edward Gorsuch had gone to

that house about four o'clock, and made an attack upon a family of colored persons. It is false from the beginning to the end. His slaves, his property, were there; he was armed with the process of the United States; the slaves were seen issuing from that house; they had their friends and allies there, armed for the purpose of resistance; and well might the old man say, when he found the laws of the United States were to be violated in his person—and that white men were there exciting these blacks to rebellion and murder, and that the process of the United States was laughed at and derided—well might a change come over his countenance, in the language of Dr. Pierce to Squire Dickinson—well might he, a brave man, become calm and stern, and utter those memorable words, "My property is here and I will have it, or perish in the attempt."

We are told, that when a yawning chasm opened in the streets of Rome, and when in the superstition of those days, it was believed necessary to close that chasm, that some bold soldier of the republic, should plunge in and be destroyed; one *Curtius*, came fearlessly to the rescue of his country, and in full armor, leaped into the fatal cavern, and closed it with his death. I say, that Edward Gorsuch, had the courage of *Curtius*, and finding that he was there with the process of the United States, and finding there were white men there, who were opposing the laws; and finding more than a hundred armed negroes, ready to rescue his slaves, by murdering him and his party, well might he say, "he would have his property, or perish in the attempt." He *has* perished, and if his death, lamentable as it is, shall produce a better feeling, and save the country from the yawning chasm of abolitionism, which seeks to engulph every Southern master, I say he will then have died for the Union, and his country will be his debtor. Here I must say that Miller Nott signed that inquest the last, and as I *verily* believe without understanding it. Now, gentlemen, let me review, as conscisely as possible, the evidence in the case, showing the preconcert and arrangement about this whole matter. In the first place, we have it in evidence, that on a day or two before the fatal occurrences of the 11th of September last, old Mr. Gorsuch left this city of Philadelphia, and went up for the purpose of communicating with his guide, who was to inform him where his negroes were—then left in the cars with two of the officers who were employed by Mr. Gorsuch—Agan and Tulley—a negro man, residing in Philadelphia, named Samuel Williams, now in prison. From the evidence, it appeared that his object in going was to give information of the intended arrest of the fugitive slaves of Mr. Gorsuch. That there was some foul treachery in the city of Philadelphia, by which this old man was to be ultimately butchered, is as evident as that the sun shines at noon-day. Who the traitors were, it is not material for you to inquire, and is not involved in this issue. Treason and murder have been committed; and whether the information was given for bribes, or for purposes of blood, is wholly immaterial.

What next? Samuel Williams goes to the neighborhood of Christiana—he gets to the house of one Smith, by mistake, and tells him that his object was to give information of this thing—that he had left a paper, in or near Christiana, upon which were written the names of the fugitive slaves, sought to be arrested.

Dr. Cain says, that Peter Washington and John Clark, (both of whom have escaped from the cells of your prison since this indictment was found, by another treachery within the walls of that prison), told him, that Samuel Williams had actually left a paper with them, upon which paper was written the name of Josh and two other slaves, and then hieroglyphic dashes and Hartford county. In regard to the county they were mistaken, it should have been Baltimore county.

What next do we see? Why we see the whole neighborhood put in a state of preparation, and in a state of resistance. The magazine is all prepared—the train is all laid, and it only requires the approach of Mr. Gorsuch and his party to fire the powder, and bring about the awful consequences that have ensued. But the counsel who has spoken for the defence, say that it was because of this night march, and the disguised guide, and other suspicious conduct of the Gorsuch party, that the blacks assembled, and they would not have done so but for this conduct. No, gentlemen, if they had gone there at 12 o'clock in the day, marching upon the open road and going to Parker's house, there would either have been the same or a greater resistance, or notice would have been given that the parties were near at hand, and no fugitives could have been arrested. Here, I would remark, that much has been said about going in the night time and arresting fugitive slaves. Why it is a mere farce, a mockery, a useless expenditure of time and money, for any man to go into a country like that to arrest and take his property in broad daylight. He would either be shot by parties concealed behind hedges and trees, or such notice would be given that his property would flee away. I say the evidence in this case must satisfy you that there was preparation to resist Mr. Gorsuch the day before, and that the leaders of the traitors did not, and could not, know that Mr. Gorsuch and his party would approach at dawn of day. The man who went up from Philadelphia understood his business, and Peter Washington and John Clark, understood their part. Can you believe that a hundred or a hundred and fifty men could have been assembled there in the country at so early an hour, except by thorough preconcert and arrangement. Mr. Gorsuch and his party proceed before day, they go to Christiana, there the guide tells them that in one of these houses near Christiana was Noah Buley, one of Mr. Gorsuch's slaves, and says that the others are at another house kept by Parker two miles off, and the discussion is as to whether they shall take Noah Buley first, and it is finally resolved to go to Parker's first, and pass Noah Buley for the present. As they pass, before daylight, through the woods, a bugle sounds not more than half a mile off, to the

right, not a horn, gentlemen, but every witness says it was a bugle. Dr. Pierce says he is confident it was a bugle, and I presume these gentlemen know the sound of a bugle from that of a horn. They say it was to the right, and a witness for the defence says, that on Tuesday and Friday mornings before day, (when this was Thursday,) a horn is sounded to arouse the laborers on the railroad. What direction is that? Why except for a very short distance, while proceeding in the old valley road, it would be to the left of the Gorsuch party; the opposite quarter altogether. For the sake of the argument, however, I am perfectly willing to say that this bugle had nothing to do with it; that it was not to give warning through the country, that the kidnappers, as they are called, but really the masters with the officers of the law, are coming for the purpose of asserting their rights. What do we next see? About the early dawn of day they arrive at the creek, and some refreshment is taken, and the remark is made that day is beginning to dawn—the guide points to the house of Parker and leaves them.

The counsel have said that going with the disguised guide, was calculated to rouse suspicion. Is there any evidence that any body else saw their disguised guide? No, the arrangement for resistance, was made the day beforehand, irrespective of the night march, or any thing else. And, when the party got to the small lane, what do they see? videttes are out. I will for a moment, go back and show you what has taken place during that time elsewhere, for the purpose of arousing and arming that neighborhood. Elijah Lewis is a witness here for the defendant, and he is indicted for treason himself. He says, that about the early dawn of day, there came to his house, Isaiah Clarkson, the leader of the negroes. Where does he come from? He sees him come across the road from Scarlett's house, who lives opposite to Lewis. Clarkson comes to Lewis, and says, "I come to say that there are kidnappers at Parker's house—that it is surrounded by kidnappers, who have come to take him, and I want you to come and see justice done." How many crimes have been committed in the name of justice, and to have justice done. That word justice has been oftener prostituted to the most wicked purposes, than any other word in our vocabulary. It is but fair to presume that Clarkson had gone to Scarlett's house, and we may judge what happened, by what Scarlett did. What did Scarlett do? "Mr. Lewis, did you see Scarlett that morning? I saw him going towards his barn." Where do we next trace him? What is his mission and object? In this whole thing, he is the henchman of the clan; he is to speed the fiery cross through that valley, and is to proclaim as fast as his horse can carry him—spurred on till he is in a foam — he is to proclaim, wherever he can see a colored person, the place of muster at Parker's; to proclaim the rallying cry, "that kidnappers are about," and to spread the intelligence, for which they were prepared the day before—that the time had come when the blow must be struck. What does Scarlett do? He goes to the house of one Moore, and sees there John Roberts, a colored man, who was upon this witness-stand—not contradicted by any witness—not giving any contradictory accounts, and there Scarlett says, when asked what is the matter, that he wanted to see Moore, that there are kidnappers at Parker's house, *and to let all the negroes know it.* This witness, John Roberts, was probably one of the last requested by Scarlett, to let the colored people know. The witness says he went to a white man, Jacob Townsend, who without pausing to ascertain whether these were kidnappers in the legal sense of the term, or whether they were officers of the law, armed with the process of the United States—lent his gun to the witness and loaded it with his own hands, and entrusted it to the black man, that he might use it according to his own discretion. And this Scarlett arrives from his mission of blood—having accomplished his purposes—having fired the train—having sent many negroes there, but not all—for I have no doubt, that by the preconcerted signals, the communicatian of intelligence was as electric as if the telegraph had sent it—the signal of blowing the horn, did its part in the work of bringing those negroes together. This Scarlett arrives a few minutes after the firing; Miller Nott and Kline say that his horse was in a sweat; he rides up, and he could feast his eyes with the fruits of his own work. The first object he saw, was the wounded Dickinson Gorsuch, who lay bleeding and helpless at the foot of a tree, and appealing to him to hold his head, and for water—and he who had incited this deed and sent those murderers there to do their bloody work, is at first callous to the appeal; until as he hesitates, a sudden fear seizes him that he may be brought to a fearful account, for his agency in that day's work, and then he reluctantly goes and gets the water, after repeated importunities. I come back to the history of this case. When the Gorsuch party arrived at the short lane, leading to Parker's house, they see the videttes out—the sentinels are posted—they run back to the house, to draw the whites into an ambuscade—who rush in pursuit to Parker's house. Old Mr. Gorsuch arrived at the door before Kline, and he saw two persons, and they were both his slaves as he declared—these slaves were evidently a decoy to lead the party into the ambush. The negroes are heard loading their guns up stairs by the Marshal of the United States, Mr. Kline, and his party; and here I say that Mr. Kline is as much a Marshal of the United States, as Mr. Roberts. Great indignity, according to the views of counsel, has been put upon the regular Marshal of the United States. It is true, Mr. Kline, is not the regular Marshal of the Eastern District of Pennsylvania; but he is a Marshal to execute the process of the United States. He has been appointed by Commissioner Ingraham, and has as much power to execute process as Marshal Roberts himself. While upon this subject, I would say that one of the counsel, Mr. Lewis, seemed to think that if this process had been placed in the hands of any body but Kline, the arrest would have been made without difficulty,

and that the great fault of Mr. Gorsuch and Mr. Ingraham, was that they did not put the process in the hands of the regular Marshal. That would be to make the runaway slaves choosers and judgers of who were to execute process. Upon this sort of argument, when a master comes for his property, and the Commissioner of the United States is about to issue his process, he is first to send a messenger up to the colony of Christiana, and inquire of the slaves and their friends, what person would be most agreeable to them to serve that process. I don't care, sir, if it were in their power successfully (which I will show they have failed to do,) to blacken this man Kline, from the crown of his head to the sole of his foot, with every vice and crime, yet he was for the time being the vicegerent—the embodied representative of the power and majesty of the government, and as such, entitled to enforce the laws. When Marshal Kline attempts to ascend those stairs, what happens? He is immediately repelled by violence. But before that, as they approach the house, Dr. Pierce and Joshua Gorsuch were stricken by missiles thrown from the windows, and Dr. Pierce still bears upon his eye, the impress of the wound. Old Mr. Gorsuch steps out of the door, and is warned that a gun is pointed at him from the upper window; he has only time to step back, when it is discharged, a few inches from his head. But he was not injured at that time. In the meantime the horn is sounding from the window above. What did that horn sound for? It was not a breakfast horn, although Lewis Cooper has sworn here that about early daylight they blow horns in that neighborhood. If that is the case, the laborers must go out to work in the dark. Breakfast horns are blown to recall them from the fields; and when the horn is blown at early daylight, we must presuppose the laborers to be working in the fields. It is ridiculous and absurd—there is no truth in it—there is no one who blows horns at early daylight, for the purpose of summoning laborers from the field, when they are in the house.

Again, gentlemen. What did Clarkson say to Miller Nott, when he asked him what was the matter? "Did you not hear the horns blowing?" I say that Clarkson, the colored leader, who, when frightened by the warning of Miller Nott, rescued Mr. Gorsuch from impending death.—A man who could afterwards call the infuriated bands to order, and then they were so still you could not hear a sound. That man who had gone for Elijah Lewis and Scarlett, that man says to Miller Nott, "Why, didn't you hear the horns blowing?" What did he mean? Why that the horns being blown were a signal, not for breakfast, but for something else. Don't you believe that the horn was blown from that house; and the blacks would not have blown it, unless it were a preconcerted signal, and could be understood by those who heard it. Would the blacks have blown a horn from Parker's house, when every body who heard it would have taken it for a breakfast horn? I am not before an intelligent jury to argue so plain a proposition as this, that *that* horn was a signal to bring to the rescue of those in the house the enemies of the law, who were in the neighborhood. They are frightened at the *ruse* of Kline, to make them believe the sheriff was near at hand with a posse, and they asked for time and appeared to be dispirited, they were afraid they might be overwhelmed before their friends could arrive. The only reasonwhy the whole of that organization was not around the house at that early hour was because it could not be known at what hour Mr. Gorsuch would come. And in the second place it could not be known whether he would first attack Noah Buley's or Parker's house. But they acted with great rapidity and despatch, the horn sounded, and they asked for 10 minutes. It was given and they asked for 5 minutes more, and *it* was given. Before this the warrants had been read, for the arrest of the fugitive slaves, and the landlord of the house had refused to surrender them.

About the expiration of the 15 minutes, Hanway appears at the bars, mounted on a sorrel horse, in his shirt sleeves. He is immediately hailed by a shout of welcome. Dickinson Gorsuch says that he heard the blacks from the window above call out, "there is somebody at the bars," he could not hear the name mentioned, but immediately there was a shout, and old Mr. Gorsuch said, "it was now worse for them that they had postponed the arrest." He makes the remark at the time, seeing that the blacks had become encouraged and were shouting, and beating their clubs and guns upon the floor. Oh, but said the gentleman, the negroes were not encouraged by Castner Hanway's presence there; it was because they saw other colored people coming to their rescue. But I will call your attention to page 145, of the printed evidence, where Mr. Nelson says that the negroes came up after Castner Hanway. Kline says there was one Ezekiel Thompson, an Indian negroe, came up a little after Castner Hanway, and Nelson says, "they came up, he cannot say how long after," and when the party looked around, (according to the evidence of all the witnesses,) the remark was, "there is somebody at the bars." Now, gentlemen, we come to the transaction as it took place, Hanway is there, he is at the bars; though Lewis does falsely swear that Hanway never went to those bars. He says he got there with Hanway, that neither of them went to the bars, but they stood in the long lane. But Dickinson Gorsuch, Joshua Gorsuch, Dr. Pierce, and Kline, all distinctly testify that when they first saw Hanway, it was at the bars on his horse. What does Kline say? "Good morning, sir." No answer. "What is your name? Do you live in this neighborhood?" "That is none of your business, and you can find it out the best way you can." Is not this the exact language as sworn to by Kline? Was he not there in a temper and frame of mind to give this insulting answer, and refused to assist an officer of the United States. Has not Lewis proved it? His own counsel admit he did refuse to assist when regularly summoned by the authority of an Act of Congress, and he did refuse because there was no penalty. Then I say, he went there, in a temper and with a feeling to

make him insult a man who wished him simply good morning. Hanway read the warrants, and when asked to assist and told of the Act of Congress, he replied that he "did not care for the Act of Congress or any law, that the negroes had a right to defend themselves, that he (Kline) could not make arrests there, and that he had better go home." Is not that confirmed by another witness? Dr. Pierce, whose evidence will be found on page 123, confirms Kline in his statement. Now I will show you something else, gentlemen, and that is, that Dr. Pierce has stated another fact which corroborates Kline perfectly, and shows that Hanway was not there merely to refuse to assist in executing this process. That would not be treason, as I have already admitted, although it would be a disloyal act to his country, although it would be a violation of an Act of Congress, even though he has the miserable plea that there is no penalty. Yet I will show you that he has done more. Look at the conversation between Dr. Pierce and Hanway. Dr. Pierce said to him, why do you come here? Why are you inciting these blacks by your presence? Dr. Pierce says by his manner he could see he was not there acting the part of a good citizen. He asks why he is there obstructing the process of the United States. He also says that although he cannot recollect all that passed, yet the conversation between Hanway and himself was decidedly angry on both sides. Kline's testimony is further corroborated. First, it is corroborated by Lewis, for Lewis admits that Hanway and himself refused to assist when summoned, and this is a part of Kline's statement. Kline made this statement before Lewis testified. He made it on this stand before he could know what Lewis would testify. It was a part of Kline's original statement and Lewis corroborates so much of it, but goes on willfully to omit that part of the conversation in which Hanway said he "did not care for the Act of Congress, or any law."

Secondly. Kline's testimony is corroborated by Dr. Pierce, and all the other witnesses, who prove that at the time he said he would hold these men, Hanway and Lewis, responsible. He then told the *Gorsuch party* to retreat, when he saw the blacks assembled in so large a force, and when he saw what was going to follow. When he saw that Hanway had read the warrants, and still continued to encourage the blacks. When he saw these blacks loading their guns, and arming themselves in the presence of their white friends. When he saw what was to be the result, he tells Gorsuch and his party, "let us go; we can do nothing here; the force is too great; the resistance is too great; let us go and you can hold these men responsible, if they are worth your property."

Their own witness, Lewis, proves that Kline said that. Almost every witness, who has testified in this case, and that was present at that time, has stated this fact. What else did Kline do? To show you that these men were there to incite these blacks and did incite them, what does Kline do at the time; and the most powerful corroboration of Kline's evidence is found by this fact. He acted as a man would act towards such a scoundrel as Lewis. He could not follow Hanway, because he was mounted on his horse; but Lewis being on foot, he tells Hutchings to follow that man; he did that at the time, so that he might see where he went to and who he was. Hutchings says he did follow him for some distance, when he lost sight of him. Now this is contemporaneous evidence, showing that Kline knew these men were there for treasonable purposes, and that they ought to be followed and ascertained, and made accountable for it. Well, we have another fact. Hanway, as Kline swears, rode his horse among the men, and whispered something in a low tone, which he could not hear, (and to which he will not swear), but immediately they shouted, "that he is only a deputy." Where did they get that fact from? Why, Hanway had read the warrant, and if you will read it you will find that Mr. Ingraham says he does deputize Kline to execute this process. Therefore, if the blacks did shout that he was only a deputy, they got that fact from Hanway when he rode his horse among them, and said something in a low tone. What did they do then? When they had received this information, that Kline was but a deputy, they immediately shout and advance. That was the signal. Hanway rides his horse a little way by the orchard in the long lane, and wheels around and calmly and deliberately surveys the whole bloody work. Then, gentlemen,

> "At once there rose so wild a yell,
> Within that dark and narrow dell,
> As if the fiends, from heaven that fell,
> Had pealed the banner cry of hell!"

Then, as Dr. Pierce says, they advanced singing the hymn "We are free!" and fired. I care not what became of Kline. The stoutest heart might quail, and brave men fly. But there was one braver than the bravest; there was one who knowing his rights, dared to maintain them, though he perished in the attempt. He was nobly sought to be rescued by his son, who though he could have saved himself, returned to the rescue of that father, and was himself brought to the brink of the grave by the desperate wounds which he there received. There was another relative, who also did what he could to save the old man; but vain the heroic efforts of Dickinson and Joshua Gorsuch, putting their own lives in danger, and vain the calm and steady courage of the old man. He died "like fox 'mong mangling hounds." I say you are not here to try Kline upon the question of cowardice, and I would like to see some of these witnesses, who have been so very astute to catch at the random speeches of Dr. Pierce.—Even if he did make such speeches, they were made before he knew all the facts of the case, and before he could hear Kline's explanation of his own situation. I would like to see some of these same witnesses, who have assailed Kline's courage, and who chuckle at their own evidence. I would like to see if they would have acted half as bravely as Kline did under the circumstances. Gentlemen, I do not think that the evidence in this case will show that Kline acted like a coward. That he might have

saved his own life by jumping over into the corn-field, I admit; that the danger was imminent and justified the act, I maintain. He did not fly into the woods, as Elijah Lewis has falsely sworn. I prove he was in that corn-field by two facts. One that the son of Miller Nott saw Kline make his appearance in the lane, and lead Dickinson Gorsuch wounded, into the woods, and place him under a tree, where he thought he was safe until he could find a doctor. He did not dream there was such diabolical malice on the part of these colored people, that they would come after that wounded man, who was lying smothered and choking in his own blood, and endeavor to take his remnant of life. That Kline got into the corn-field, is proved by another powerful fact. Recollect that Miller Nott and his son both say, that when Clarkson spread out his hands he turned back these men. What *then did they do?* They jumped over into the corn-field and searched it. Why did they do so? Why some of them must have seen Kline when, as he swears, he got into that corn-field, and not having seen him come out afterwards, they thought they would find and kill him. Having been disappointed in glutting their vengeance upon Dickinson Gorsuch, they thought they would vent it upon a white man in that field, and one of them said, "I would as soon die now as live." Yet Elijah Lewis swears that Kline was in the woods before the firing began, and he never returned from the woods to lead Dickinson Gorsuch, and said that if he had done so, he could have seen it. But look at another fact, to which I will presently call your attention more fully. Elijah Lewis tells you that while Kline and Hanway were talking together, the negroes were about to shoot. That was down near the mouth of the short lane, as Lewis says. And while they were talking, Hanway turned round and said, "for God's sake don't shoot." Well, did they shoot? If this is true why did they not shoot? Lewis says they did not fire until after Kline got into the woods. At the time then, when they were about to shoot, and when Hanway called to them, Kline and Hanway were together, not in the woods, but down at the mouth of the short lane, according to Lewis' statement. They did not shoot, if you believe Lewis, until Kline had time to get into the woods. Who stopped these men from shooting but Hanway? They obeyed him, and did not shoot until Kline had gone up into the woods, a very considerable distance. If Lewis is, therefore, to be believed, his testimony would prove that the blacks were under the orders of Hanway, to shoot when he said shoot, and not to shoot when he told them to hold. Gentlemen, Kline is also corroborated in the other leading facts of this case. That he did at Christiana, on that very day of the Coroner's inquest, charge these men with having incited the blacks to murder, is perfectly manifest from the fact that the jury would not hear what Kline had to say.

Lewis Cooper says that he told such various tales that they would not believe him. This is pregnant evidence to my mind that Kline did charge Hanway and Lewis with abetting and aiding these men to do what they did, and therefore the jury did not wish to hear him. Oh, but say the counsel, Kline never could have told the truth when he said that Hanway rode among the men and muttered something. Because Kline on that or the next day told a witness, I think by the name of Lawhead, that he heard Hanway order the blacks to fire. You will also recollect Alderman Reigart testifies, that on the 13th at Christiana, when Hanway and Lewis were arrested, Kline used this language to them. He called them "white-livered scoundrels." He said he "had begged for his life and the lives of his men like dogs, and they had not said a word to restrain the blacks, but on the contrary they ordered them to shoot." Kline never swore it. No, gentlemen, but when Kline comes to his oath, he confines himself to facts, and he has not given utterance to his belief. But when he was speaking of it, freshly and recently after the transaction, he expresses his belief and opinion by way of a positive charge. He knew Castner Hanway had rode his horse among them, and said something in a low tone, and they had shouted he is a deputy, and fired Having seen Lewis, and knowing he was a partner of Hanway, he charged them both with giving orders to the blacks to fire. Lewis promptly denies it. He says I did not give the order; but Hanway, who had ridden his horse among them, and said something in a low tone to them, he did not deny it. Lewis was swift to deny it, and I believe he gave no such order, although I believe he had used treasonable language in the presence of these men, which was calculated to incite them to treason. Lewis denies it on the spot, but Hanway is silent when accused. I admit Kline's language was improper. The counsel for the defence, not contenting himself with commenting upon that language, took occasion before the Court to denounce it in advance. I am not here to defend that language. But, gentlemen, place yourselves in the same situation, and say if there is not some allowance to be made for the excitement of a man who had been outraged and treated as he had. Say whether this man, whose men and companions had been shot down in cold blood, and some of them in his sight, whose party had been scattered and broken up, so that he had to go and hunt for those who were supposed to be lost in the woods. Say whether there is not some allowance to be made, when he was laboring under great excitement, and saw these murderers again in his sight.

Although they prove that Kline had been sworn three times before, they have not shown that in either of his examinations he has contradicted himself in any particular. It would have been just as easy for Kline to say from the very begining, if he were actuated with a desire falsely to put the responsibility of this affair upon the shoulders of these men, as counsel have insinuated, it would have been just as easy for him to have sworn that he heard Hanway order the blacks to fire. If Kline were perjured and did not feel the obligation of his oath, it would have been as easy for him to have sworn to this important fact, which *he believes*, as to have ex-

pressed that belief before the witnesses. But he has contented himself with facts, and he has not stated as facts that which is a matter of belief. When charging them to their teeth with it, he stated the conviction of his *soul* by charging Lewis and Hanway with having ordered the blacks to fire. How did Kline act? Could any man have acted with more coolness under the adverse circumstances. He saved his life by getting over into the corn-field. The bravest man might have done so. He succors the wounded Dickinson Gorsuch, and leads him to the woods in view of the excited blacks and there leaves him, to go for a physician. He takes Joshua Gorsuch, another of his wounded party, along, and carries him to Peningtonville. And just consider, gentlemen, the condition of poor Kline, when he got to the Brick mill, (where Squire Pownell met him). Kline said he had been up all night, and he was exhausted and weary, and he pointed to his pantaloons which were draggled in the wet and dirt. He was weary and wanted sleep, having been marching from Penningtonville to Christiana, through corn-fields and bye-ways to Parker's house, (the guide having taken them by secret paths). He wanted a conveyance for he was weary. He goes on to the store with Joshua Gorsuch and there cannot get a conveyance for mercy's sake or for money. He gets to Peningtonville. What does he do? He puts Joshua Gorsuch in the cars at Penningtonville, and not flying back to Philadelphia, as he would have done if frightened, he goes immediately back to Christiana to be present at the coroner's inquest. He is there, a stranger among the Philistines, to charge these men, Elijah Lewis and Castner Hanway, with aiding and abetting in this treason. When there he is told we wont believe you, we will not hear you, we are going to stigmatize the dead. You, Mr. Kline, may go away, although you are a stranger to us and have in your hands a process of the United States; we will not hear you. Such is the language of this perjured jury. What does Kline do? While Lewis Cooper is going home and getting ready to make an excursion into Maryland, with the body of his *father-in law's victim*, Kline has the body promptly taken care of and sent home that evening by the cars. What else could he do? This does not look like a man who is afraid to tell the truth and to do his duty. Afraid to venture back! He goes the next day to the house of Rodgers' in the very vicinity of this transaction, where there may still be armed bands ready to kill him; he goes to Rodgers' house and there sees Hanway. He goes the same day to search for Hutchings and Nelson in the woods, not knowing that they had got safely off. These are not the acts of a man who will fly from danger, and not calmly encounter it when necessary. But, as I before said, you are not impanneled to try whether Kline be a coward or not, it is a collateral point with which you have nothing to do. Kline is confirmed in almost every particular, by some of their own witnesses, and you can scarcely mention a point where he is not powerfully confirmed by some of the defendants' witnesses. How is he assailed? By twenty-nine witnesses, I think, (although I paid very little attention to these witnesses at the time,) twenty-nine witnesses, who have come here to testify out of the whole city of Philadelphia, in regard to a man who has been connected with the police, and in regard to a man who must have been involved in a great many transactions of business; they have with all their industry, managed to bring twenty-nine witnesses to assail his general character for truth and veracity. Well, I say, I paid very little attention to them, because I was informed that these witnesses would be far outweighed in number, by opposing testimony, the most respectable, in favor of his character.

Though I paid so little attention, yet I heard the most extraordinary statement fall from one of the defendant's witnesses, a witness whose name I forget, and do not care to remember, who volunteered his testimony to the counsel for the defence, and who stated to them he could give evidence against Kline's character, and who, when upon the stand, not content with having volunteered general testimony, volunteered the remark, that he could give *something else*. We told him to tell it all.—For when you see one of these swift witnesses, the true way is to gratify him; and to give him rope, and he will hang himself. What did he say? Why, he went to Colonel Lee's office, and Colonel Lee was busy looking at some papers, and did not listen, but the witness heard Kline speak about this transaction; and when asked if Lewis did not save his life, he said, "Yes, Lewis did save my life." Well, how did he do it? "I got behind his horse, and that is the way my life was saved." And when asked to tell who first told the witness what he had told to Kline, he said he could not tell who he heard say it, and he cannot locate the story. Why, gentlemen, at that very time, one week after this affair, Kline had given his deposition at Christiana before Commissioner Ingraham, and can you believe that Kline stated any such fact; that Kline would have gone about, and in Colonel Lee's office, or any where else, and have uttered so base a falsehood as this, namely, that Elijah Lewis had saved his life, and he was on horseback. No such conversation ever occurred. This man has mixed up the statement of Dr. Pierce getting behind Castner Hanway's horse, which he had read in the papers,—that is all, and there is not a word of truth in it.

I say, gentlemen, there are few men in the situation that Mr. Kline was,—an officer connected with the police for a number of years; there are few men who might not be assailed, and, as Marshal Keyser says, there are but few men that he has not heard more against than he has against Kline's character. This man, who has been so traduced and vilified, because it was necessary for the defence that it should be done; this man, who had gone to Christiana to make some arrests of the traitors; this man, who has so many prejudices against him—merely because he wanted to try and ferret out this transaction, by conversing with a prisoner at Christiana, was maltreated, abused and thrust out of the room, by

several persons in conjunction with one of the witnesses, who was here to assail his character. Now, in regard to Dr. Pierce, I think the counsel said that by the instruction of their client, who deplored as much as any man this unfortunate affair, and who was desirous that none of the feelings of the Gorsuch family should be wounded, they would not impeach or say ought against any member of the Gorsuch family. I think, gentlemen, that honorable feeling which was proclaimed in your ears, has been most inconsistently carried out. How has it been done? Is not Dr. Pierce a member of the Gorsuch family? Is he not a nephew of the deceased? Why, gentlemen, should he be assailed, when their client instructed them not to say aught against the Gorsuch family? And yet there have been studious efforts made to assail the credibility and character of Dr. Pierce before you, by endeavoring to question and contradict him as to collateral points, and with regard to the opinions he might have expressed under the excitement of the moment. I have only to say, that I believe every word that Squire Dickinson has stated. Dr. Pierce had no recollection of his name, or of meeting him in the cars. I cannot but believe, that if Dr. Pierce conversed with the other witnesses, they have highly colored his statement, and many of these witnesses were spies. These were merely opinions of Dr. Pierce, and not contradicted by any thing that Dr. Pierce has sworn on this subject. But it is said that Dr. Pierce has shown himself deficient in gratitude to Castner Hanway, and but for him he would not have been here on this trial; and Mr. Lewis, the counsel, reproached him because he did not feel a due sense of the obligations under which he was placed to Mr. Hanway. Why, gentlemen, if Hanway had been frightened by the responsibility which devolved upon him by his previous acts, and had got off his horse and told them to get on and fly and save themselves, I say, *that* would not have cleared him from the blood of Edward Gorsuch, which rests upon him. After the bloody work had been completed; after he had seen that blood had been shed and life had been taken, it would not have been wonderful if he had done all he could to cloak the transaction, and to endeavor to save himself by saving some of those who survived. But he did not even attempt this. They asked him to do so, and though there was a wounded man staggering by his side, whose *brains* might have been scattered there by the road side, (as he states) but that his hat was thick and contained two pocket handkerchiefs inside; and who implored Hanway to let him get on his horse behind, which would have taken but a few seconds to accomplish. What does he do? Why, when Dr. Pierce is running along side, in front and behind and every side of his horse to save his life, and when the negroes are shooting and he thinks he is in danger, he turned round to them and said, "Boys, don't shoot." Gentlemen, the shot were coming too near to his own dear person—there was danger; and if he had been shot by his good friends *the blacks*, it would be but fulfilling the old saying, that "he who sows the wind will reap the whirlwind."

Hanway then heartlessly tells Dr. Pierce and Joshua Gorsuch that he could do nothing for them, put spurs to his horse, and away he goes light-hearted and happy. He does not return to his peaceful home, but whither he goes we know not; however, it was in quite an opposite direction to his own house he went. Dr. Pierce might have expressed his belief as a matter of opinion, but not as a matter of fact, that his life was saved by Hanway in this way. He believed that getting behind his horse had sheltered him, he believed Hanway, turning round and saying something to the negroes, had turned back from the fierce pursuit the largest portion of them. But some others followed him far beyond that point. Hanway did not turn all back, but went away, and left him still a fugitive and still pursued. But though this might have been the fact, Hanway's motive was not to save Joshua Gorsuch or Dr. Pierce, it was to save himself, because it is fair to presume that he did not want to save these parties whom he had refused to take on his horse, and to whom he had said, I can do nothing for you. Now here is an attack made upon Dr. Pierce. Here is an effort made to impeach him by contradicting his statements. Yet he is one of the Gorsuch family. He saw his uncle butchered, and there was such a desire on Hanway's part to spare the feelings of the Gorsuch family, that none were to be assailed or impeached, and yet Dr. Pierce is thus sought to be impeached. Gentlemen, I have only to say, that if any member of the Gorsuch family is susceptible of impeachment, I say it should have been done, Dickinson Gorsuch not excepted. I say that truth is greater than any other consideration; and if Castner Hanway can impeach any man of that family, he ought to have done it, as necessary to truth and justice, and he would have done it. In behalf of those witnesses, we want no such favors, or admissions or declarations that their feelings might be spared and their evidence not impeached, from motives of delicacy.

Now let me come to Elijah Lewis, and very briefly. Gentlemen, if ever there was a witness who broke down a defence, who was a mill-stone around the neck of the man in whose defence he appeared, and who dragged him down to the bottomless abyss, that man is Elijah Lewis. What does he say? He was invited by Isaiah Clarkson to come and see justice done, and he delivers the same message to Castner Hanway which Clarkson had given to him. He tells Castner Hanway, that Clarkson had called upon him to go to Parker's, and see justice done. Hanway, while his horse was being bridled and saddled, sits down and eats his breakfast. He then rides to the spot rapidly, and gets there before Lewis, but he goes upon the same errand, and with the same intent as Lewis. What is Mr. Lewis's object in going there? I have shown you what his neighbor Scarlett's was I have shown you his object was to send the blacks there armed. Now, upon what errand did Lewis go? Upon his way,

after having summoned Castner Hanway, he sees a poor negro, Jacob Wood, digging potatoes, and tells him, "This is no time to be taking up potatoes, when William Parker's house is surrounded by kidnappers." Jacob Wood follows him to Parker's; and he goes alone, upon the invitation of Lewis. Lewis gets this poor negro enlisted, though without arms, because none were convenient, though the black man might have found a club or a stone on the ground at Parker's, convenient to beat a man's brains out with. What does Lewis do after he gets there? According to his own evidence, he finds there is lawful authority. He has left his spectacles at home, but he can read the name of Mr. Ingraham, and is satisfied there is authority. What does he do? Though he went there to do *justice to the negroes*, he gets them into the most awful dilemma that they can be placed in, and suffers them to commit murder; he suffers them to commit robbery, for by some of them the dead body was rifled. He does not tell those misguided creatures (some of whom he had taken there,) he does not tell them that Kline had authority for the arrest of these slaves, and that resistance would be criminal. When asked for his reasons, he could not tell why he did not caution the blacks.

This man Lewis goes away and leaves these colored people, whom he was to befriend, by getting up early in the morning, and going one mile and a half before breakfast to see justice done. He goes away and leaves them to imbrue their hands in innocent blood. Is that doing them justice? Should he not at least have called for Clarkson, the leader, who was in command of this band, in order to apprise him that the officer of the law was there? Should he not have said to some of these men, "Take care now, you are about to violate the law—this is no case of kidnapping?" He is willing to let them get their necks into a halter and cannot give a reason for it. But that is not all. He says there was an inquest there, and that he could identify Dorsey, Thompson and another. He sees them concerned in this outrage, he has been called to go to a wounded man, and has declined, and comes back at nine or ten o'clock that day, sees the dead body of Mr. Gorsuch; sees Squire Pownell; sees that a jury of inquest has been summoned and are going to Christiana; he can identify three of the murderers, and knows that the proceeding on the part of Mr. Gorsuch and his party was with authority; he knew then that a murder had been committed; that a man had been murdered in the lawful prosecution of his rights, and he knew who some of these murderers were. Why does he make no accusation before that Justice of the Peace? Why does he not give testimony before that Coroner's Jury? Let any man answer and tell me why. No, gentlemen, he cannot give testimony until here upon this trial and for the purpose of clearing his confederate—the man whom he had carried there, invited to go there; by whose house he had called and to whom he had delivered the message of Clarkson, to come and see justice done. He can give no testimony for the prosecution and the laws, which he knows to have been outraged. Nor can he say any thing against the murderers. He can suffer innocent blood to be shed and do nothing; except that Hanway shall not be convicted if he can by swearing acquit him. This man says he is a post-master of the United States, having taken an oath as such to support the Constitution of the United States—to support that Constitution, which, through Congress, has spoken and commanded him to assist in the execution of the laws of the country, whose mandates he has evaded and resisted according to his own admission; and thereby perjured himself in his very oath of office, as well as on this stand—that man, a sworn officer of the United States, enjoying its emoluments, however small. —He goes there—is summoned to assist in the execution of the laws, and he does not open his mouth for the purpose of telling the negroes that they are acting against the law, but he goes away as he tells you because he is a little alarmed; though he could not be alarmed two hours afterwards, when he came back. Why did he not then give his testimony and endeavor to have these men punished. No, gentlemen, there was no disposition for such things; the same spirit that actuated him in telling Jacob Woods "that it was no time for taking up potatoes, when Wm. Parker's house was surrounded by kidnappers," actuated him then, and he did not endeavor to bring to justice one single man who had imbrued his hands in the blood of Mr. Gorsuch; and those colored persons whom he could have identified are all gone.

Then again he cannot give his reasons, or tell why he did not make a charge against the offenders. I say, now if what he stated is true and if one of these colored men is convicted of treason or murder, and hung,—I say, if Elijah Lewis has told the truth, the blood of that colored man is upon his soul; for if Lewis had told him that there was authority, and that it was not a case of kidnapping, he might not have done that which forfeits his life. I say, having failed in his duty to his colored friends, let us see how he acted towards these white strangers. I asked him, did you not go away and leave the Gorsuch party in danger? and he says, "I thought they were coming away, they made a movement to come," and yet in the next breath he says, "*I did give not them a thought.*" The man who saw a hundred or a hundred and fifty blacks, armed with every implement of war, guns, pistols, swords, and corn-cutters, clubs and scythes, and saw these infuriated men about to murder white men in pursuance of their rights, and backed by authority, that man goes away and does not give "a thought to the white men" who were there, one of whom was immediately murdered, and three of the others wounded, and the whole party routed. Gentlemen, upon testimony so rotten, so corrupt, so shamefully perjured as this, I cannot for one moment suppose an upright jury can acquit Castner Hanway. On the contrary, when you see such falsehood, when you see such evident perjury, it sinks the case of the defence deeper and deeper. The question will be, why this conduct on the part of

Lewis, if he was innocent, and if he and Castner Hanway went there as friends for a common object? The evidence of Lewis condemns both equally. Why has he done acts that he cannot explain? No answer can be given but that he is a perjured man. But, independent of Lewis, there is abundant evidence to show that Castner Hanway went there for a purpose far beyond doing justice to the blacks, far beyond refusing his assistance; he went there for the purpose of preaching sedition and inciting men with arms in their hands to slaughter the officers of the law. Now, gentlemen, was there not an organization there? was there not a combination there? was there not preconcert? was there not previous notice and preparation? did not Scarlett go on horseback for the purpose of collecting the negroes? were not horns blown for the purpose of assembling them "as minute men?" was there not a complete organization in all that neighborhood? It is said, in the first place, that the organization was for lawful purposes, that as far back as January preceding, a colored man had been taken in the night time by violence, and had never been heard of since. That a band of men, not citizens of Maryland, but of that neighborhood, a band of miscreants, had gone to Chamberlain's house and carried away his colored man. In the first place, let us see whether that was unlawful; they have wholly failed to show it, giving us no notice of this defence; they have failed to show that he was a freeman. Their own witness said he had heard that he came from Maryland, and that he had only seen him in that neighborhood eighteen months, that on a certain occasion it was reported that there was a search for runaway slaves, and that he, with a number of others disappeared. I dont think there could be stronger evidence to satisfy any one, who were runaway slaves—and who were not, than such conduct as this.

You will see that at such a time, every man who is a runaway slave will put himself out of the way, while those who are conscious they can prove their freedom will remain. In about three weeks they came back, thinking the danger was over. These men came not when the family was buried in sleep, but when there were eye-witnesses; they came at night and saw the negro man in the room—they have met one of the neighbors, and they tell that neighbor not to say any thing about it, and next they tell him that they are going to Chamberlain's to take the colored man. No man, while desiring to see the lawful rights of the master enforced, is more opposed to cruel and harsh treatment to these negroes than we are; and I scarcely know a Southern State, and I say this in reply to what was said by Mr. Lewis of their treatment in the South—I do not know a Southern State in which cruelty to slaves is not punished; and the man who sheds the blood of a colored man in the South is stigmatized, unless he had justifiable cause of self-defence. I say there is not a Southern State, with whose laws I am acquainted, and certainly not the State of Maryland, where cruelty to the slave is not punished. That the law there does arm the master with power to punish the slave when disobedient, is a fact; but the correction must be moderate and proportionate to the cause, and if the master shall cruelly beat the slave, he is liable to an indictment, and if death ensues, he is liable to the same penalty as if he had killed a white man. I regret that in taking this runaway slave, there appears to have been traces of his blood, but the extent of that injury is not known, it may have been but a slight wound, the blood may have come from the nose. The witness says he saw a pool of blood on the porch. If there was any injustice, or crime, these men should have been indicted—they are resident in Pennsylvania and citizens of Lancaster county. Why are they not indicted and sent to the Penitentiary for kidnapping? There is one of the defendants' counsel, residing in the same county; but they are still there at large. Don't you believe that in that neighborhood there were plenty of men to have had them indicted and sent to the Penitentiary, if they had arrested a free negro and carried him into slavery? What objection then, is there to that transaction? Is it that it was done in the night? You cannot, as I remarked before—in a settlement of that kind, capture a runaway slave in day time—it would be a wild goose chase to go in daylight when you could be seen far off. When gentlemen take offence at these night marches, they virtually strike at the exercise of the right to recapture. The Constitution says, not that it shall be done in the day time, but the master can take his slave when and where he pleases. He has the same right of recapture as in his own State. It is safer for the master to get the process of the United States, but he has a right under the Constitution, without the Act of Congress, which is merely cumulative and protective—he has the same right to capture and seize the slave where ever he meets him, as he would have in his own State. That is expressly the decision of the Supreme Court, in the case of Prigg *v.* Pennsylvania, in 16 Peters. When, therefore, you allege that a master has come into Pennsylvania, and illegally seized and possessed himself of his slave without process, you are to inquire, has he done that which he had authority to do in his own State. You are to look to the laws of his own State; for the Supreme Court says, "he has the same right to repossess his slave here as in his own State." There is but one qualification to that—he is to do it "without a breach of the peace and without illegal violence." This qualification, that "he shall not commit a breach of the peace or illegal violence," does not extend to that violence which he may inflict by taking the slave against his own resistance; because the Constitution recognizes no right on the part of the slave to resist his master. The breach of the peace, is as towards third parties. I admit, that under that clause of the Constitution, a master, pursuing his slave without process, would not have a right to break into your house, or to knock you down, if you stood in your door, and his slave was behind you; but if he can get that slave without a breach of the peace towards others, I say he has a right to re-capture him, and the resistance of the slave

is not such a breach of the peace as is contemplated. Therefore, I say, that if these men went to the house of Chamberlain without process—and when they are indicted it will be time enough to try that—if they did this without committing a breach of the peace, although I regret and deplore that there should have been females in that house, whose sensibilities might have been injured, though I regret and deplore that the slave should have been injured, still I say they did not violate the laws of the land.

There is one remark I must make in passing. If there are families in the State of Pennsylvania who will harbor runaway slaves, who will hire and employ these fugitive slaves who are said to have come from Maryland, as Pennington says this man was said to have done, if they will do these things, I do think, when they have not been over nice or cautious in finding out whether the man be a fugitive slave or not, that they have no reason to complain when a gentleman finds his slave is concealed and harbored, and takes him as he can get him. The feeling of my heart, the disposition of my mind is, that he who employs a man said to come from Maryland without being satisfied of his freedom, is himself guilty of the first wrong; it wont do for him to say his feelings were outraged by the arrest of a slave in the night-time, when he and his family are present. That is the whole defence in this case; and it is admitted, that in consequense of that event an organization took place—I refer to the opening statement of counsel—in which it was admitted that there was an organization, and that it originated in this very circumstance. Therefore, the organization is admitted; but it is proved independently of that, by the evidence in chief, by the fact that a multitude came there; that they assembled at the blowing of horns, and that the horns from that house were responded to from the neighborhood. But there was an attempt to try to explain away this organization. What was the intent, what was the purpose for which it existed? Was it simply for the purpose of rescuing free colored people about to be kidnapped, or was it an organization to resist whoever might attempt lawfully to reclaim a fugitive slave? We may show that the intention of that organization was, as we allege it to be; by proof of what was done when Mr. Gorsuch was killed, as the intention may be inferred from the act. Why, Lewis says that he and Hanway went to this house because they were informed by Clarkson that Parker was going to be kidnapped; when they got there, they read the warrants. Lewis says, he did not know what negroes they were; he did not stop to notice what slaves, and whose slaves they were. And if you believe the evidence on the part of the prosecution, Hanway and Lewis incited the blacks to resist, though they did not know what slaves were there. They certainly found it was not Parker who was to be taken. What did the blacks do? Was there an organization merely to protect freemen? They heard the warrants read at the house, and resisted and refused to give up the slaves, and shouted out afterwards, if you believe Kline, "He is only a deputy-marshal." The hymn they sang as they marched forward to resist the laws, was the hymn, "We are free!" The slaves of Mr. Gorsuch were there; the others, whether free or slaves, were aiding and abetting, and assisting them. Whether Mr. Gorsuch fell by the hand of one of his own slaves or others it is not material to inquire; they were all aiding and assisting. So it is manifest that this organization was not an organization for the purpose of rescuing free people of color about to be kidnapped; there is no foundation for it, and its legitimate object and direct design was to prevent any colored man, slave or free, from being carried into slavery.

This is said to be no levying of war; and the counsel for the defence facetiously said, that it was preposterous to suppose, that eight-and-thirty blacks, headed by a miller on a sorrel horse, and with a felt hat, had levied war against the United States. But, gentlemen, there were many more than eight-and-thirty negroes; there were from one hundred to one hundred and fifty; the gentleman is very wide of his mark. Unfortunately for the justice of Pennsylvania, but thirty-eight have been arrested out of that multitude. But cannot fifty men, even, levy war against the United States? It is not the raising of a grand army to overturn the liberties of your country, and destroy the whole government, that is necessary to constitute levying of war. Suppose fifty men band together in this city, to resist the officers of your custom-house, so that there shall be no duties levied in this city; and they determine that whenever the custom-house officers go to execute the laws of the United States, they will resist and rescue the particular property or merchandise, and they do resist and rescue it. If their purpose is not merely to prevent the levying of duties in a particular case, but if the general purpose and scheme of the organization, be to prevent *duties being levied in this city* and, they proceed *forcibly* to execute this purpose, I say they are guilty of treason. Upon that point you will be charged by their honors. I say fifty men can do it; and if fifty men can resist the laws of the United States in Philadelphia, fifty men can do it in New York, and in Boston, and in Baltimore, so that the officers of the government cannot raise any revenue. If there be a combination of fifty or a hundred men in Sadsbury township, whether white men or black men, it makes no difference; whether the treason was preconcerted among whites or blacks, it makes no difference; if there be that preconcert, and they be allowed successfully to execute their plans; the same thing can be done in the next township; and fifty men can do it wherever the law is sought to be enforced; and at every point where there may be a fugitive slave, it will be in the power of these men to resist the laws. And is the general government to raise armies, and march them into the township to put down treason? It is the combination accompanied with force, to resist the laws; whether the force be sufficient to prevent the execution of the law or not, is not the inquiry. If the conspirators be assembled in force, for the general purpose of preventing the execution of the law in that,

and all similar cases, in that locality, I shall submit it is levying of war. The counsel for the defence seems to think that levying of war, is only when the whole country is in danger; that there should be a General with epaulettes upon his shoulders; and that the miller cannot levy war, if he has a felt instead of a cocked hat on. Chief Justice Marshall has said, in Burr's case, it is not necessary that any of the persons should be armed to levy war; if the combination and purpose be with mere physical strength to resist the execution of the laws, it is a levying of war. Let me take it in a military point of view. Suppose General Scott or any other officer, is commanded to garrison a fort in time of war or peace, (it makes no difference,) and a combination of fifty or sixty men take possession of the fort; they arm themselves, they plant cannon on its walls, and say he shall not come into, or take possession of that fort and garrison it. Are they not levying war because there are only fifty or sixty men? And is there any difference between this case, looking at it in a military point of view, and resistance to the civil process? Is it not the law of the United States, through its officers, that is opposed? No law of treason applicable to the case of a military officer executing the lawful authority of the United States, but applies to the civil officer. I admit, that perhaps, if the object of this party in assembling, was merely to rescue the particular slaves of Mr. Gorsuch, from feelings of affection, partiality, or friendship for them, and there was not a general purpose to prevent the execution of the laws of the United States, upon any, and all fugitive slaves in that neighborhood, then perhaps it might not be treason; because there was no general or public purpose; but if they had only acted in regard to these, as they would in regard to any other slaves, then I say, there is a combination for a treasonable purpose, namely: to nullify and obstruct the execution of the laws of the United States.

What have I to say in regard to Castner Hanway? It is said that we have failed to prove he was a conspirator or counselled with the blacks, or attended meetings for the purpose of resisting the laws. I have before remarked upon the utter impossibility of obtaining that sort of testimony, necessary to make out such a case by positive proof, and I say it is not necessary. Law is after all but common sense and common justice, and because we have no "*States' evidence*" who will take the stand and say he heard Castner Hanway conversing with these negroes and counselling them to these things, is he to be acquitted? No, gentlemen; you may infer his previous concert and understanding, by seeing what he did upon that occasion; you may infer the purpose for which he went there, by looking at what he did when he got there. But suppose for the sake of the argument, that Castner Hanway was as innocent as the child unborn, until he rode up to those bars—suppose that he never had plotted treason in his scheming brain; suppose that being born in the *quasi* slave state of Delaware, as stated by his counsel, where he lived till he was five years old, and that he had there suckled with his mother's milk a love for the institutions of slavery—and I wonder the counsel did not go further, and say he was a strenuous advocate of slavery; suppose he went to those bars without a taint of abolition feelings, merely as a spectator—still we shall request the charge from the honorable Court upon this point, that if there was a band of conspirators, then and there assembled for treasonable purposes, and he did then and there for the first time connect himself with that band, by inciting and encouraging them by words, though he struck no blow, he is as morally and legally guilty as if he had devised, concocted, and originated the whole treason. That is the law of treason. Will you tell me, that if I see an army marching against my countrymen—if I see a band of traitors marching with arms in their hands, to overturn the laws of the Union—if I chance to come up at the time of the encounter, and cheer them on by words and speeches, that I am not a traitor in heart and act, as deeply dyed in the wool as if I were their leader. Arms are not necessary to make treason. I put it to this jury whether you have such an amount of credulity as to believe that these colored persons, dwelling in Sadsbury township—looking to white counsel and protection—saying from the window of Parker's house on that morning, that they wanted to send to see a white man, a Mr. Pownell; Clarkson, their leader, going off early in the morning to Lewis and to Scarlett, white men, that they might come and see justice done; looking to white succor and counsel; I ask you if you believe that this band of blacks would, in broad daylight, with arms in their hands, have fired upon Mr. Gorsuch, in the presence and view of Castner Hanway, unless they knew they were in no danger from him? Can you believe it? They received him with a welcome shout; and if you believe our witnesses, they said from the window "there is somebody at the bars;" they mentioned the name, though it was not heard distinctly. You see the blacks coming up, some on horseback and some on foot, loading their guns in his presence and before his eyes; you heard him say, if you believe Pierce, "that they have a right to defend themselves, and that you need not come here to make arrests." You hear him get into an angry altercation with Dr. Pierce, and Dr. Pierce charges him on the ground with inciting the negroes, and doing nothing to restrain them, and that man living in the neighborhood; and you hear him say much more if you believe Kline—you see him calmly wheeling his horse around, to witness the massacre of white men. I need not go over the other grounds; refusing to assist and leaving them to their fate; you have it all in evidence, and you have in your hands the fate of Castner Hanway, so far as the facts and evidence are concerned. Before I conclude I must notice, representing the State of Maryland as I do here in part, that gross and atrocious charges have been brought against my State. I had not expected it from the courtesy of the bar; I supposed we would be able to proceed harmoniously; for even if Maryland had not authority from the general govern-

ment, she had a right to come here and investigate these facts over the grave of her murdered son. I had expected she would have been treated courteously; I thought it was not necessary for the defence of this man, nor for the position of his counsel, that the State of Maryland should be insulted and traduced—and yet she has been charged with "thirsting for the blood of this man." No, gentlemen, she thirsted for nothing but the pure and undefiled fountains of justice, "as the hart panteth for the water brook in the desert." She has been charged by Mr. Lewis with desiring to hang a Pennsylvanian, because she cannot hang an abolitionist.

Gentlemen, I know not how, with a proper respect for the Court and my own position here, to characterize all such imputations on my State; I can but speak the feelings of scorn and detestation with which I regard such low, false, grovelling and contemptible imputations upon the State of Maryland. Gentlemen, her banner is untarnished—she is not here in this court of justice because she thirsts for revenge—it is false to impute any such thing to her. She is here, looking as a mother should, to see that her first duty is discharged: the duty of protecting her children. A second child of hers has been immolated upon the soil of Pennsylvania, by this demon of discord, which threatens the perpetuity of our Union. Is she to be insulted here? Is that the way you discharge justice here—that the counsel for the prisoner are to insult a sovereign state, because her people have, by meetings and otherwise, called upon her highets executive officer to send representatives here, one of whom I am; and for fear that I was a prejudiced witness, our Governor has associated with me a son of Pennsylvania, occupying a high position in the councils of the nation; and we are all here gentlemen, not as Marylanders, but representing the common country—the common United States—under the flag of that Union—in the Court of that Union—in this Court where justice presides upon her eternal seat. We are here with the sanction of the general government, and under the control of the District Attorney, who has the power at this moment, if he thinks this prosecution should be stopped, to say so, and there is an end to it. Yet my State is to be insulted: a collateral issue is to be got up; the prejudices of the jury are to be inflamed by fierce attacks upon the State of Maryland. My State fears not—she is not to be turned aside by denunciations or assaults; she is here fearless and undaunted, contending for justice and for nothing else. If you believe and can be satisfied that this man is innocent, acquit him, but do it honestly and conscientiously, regardless of praise or censure. The people of Maryland will judge for themselves, they will look at the evidence and facts. If they differ from you it is for them to resolve what they will do. I have discharged my duty, and the sovereign people of Maryland will act for themselves. I have but little to say to your honors upon the law of this case, for your honors must be wearied with the legal discussions which have already taken place.

JUDGE GRIER. Mr. Brent if you feel worn out you can take a respite at any time.

MR. BRENT. No, sir. In a few moments I can conclude what I have to say. This is alleged to be so small an outbreak in Lancaster county, that war cannot be said to have been levied. It was but the other day that I saw it stated in one of the Northern papers, that "this battle of Christiana was the first battle fought with carnal weapons upon the soil of the Free States, and that the battles of the Revolution, however well intended, had proved in the result to be nothing but the battles of slavery." And yet this battle, which according to the view of these fanatics, is a matter for sympathy and glorification, for aid and comfort in those who are accused of being participants in it, is now by the counsel of one of the parties implicated and arraigned here, to be too inconsiderable and too trifling an affair to rise to the dignity of treason. I presume the first battles of the Revolution, the battles of Lexington and Concord, might have been disposed of in the same way in London; and it was doubtless said that the force engaged in those skirmishes was too small to shake the majesty and strength of the British Lion. The same thing might have been said about the Western insurrection. There a portion of the people of four counties arrayed themselves against the laws of the United States, and upon the marching of an army into that country the insurrection vanished without a battle being fought; it was dissipated like the mist of the morning before the rising sun; yet that was held to be treason. And so on the occasion of the Northampton outbreak. There I believe only a portion of the people of one county were arrayed in armed opposition to the execution of the law of Congress, the taxation of houses. I believe in the latter case nobody was killed, for in the charge of the Judge to the Jury he remarked, if any body had been killed they would have added murder to the crime of treason. Your honors will observe that the whole law of treason is clearly laid down in the decision of Judge Patterson, in the case of Vigoll: State Trials, 175; but I will merely read a passage of it.

* * A more condensed and correct definition of treason could not be given. I do not understand by that that the parties must know of an "Act of Congress." I do not understand that the parties must organize expressly to defy the execution of a given "Act of Congress." They may be perfectly and actually ignorant of any such law, yet if they have combined together by force and approbation that which Congress has said shall be done, and they resist it, then the object they have in view is to oppose the law, and it is treason. I will show your Honors that ignorance of the law makes no difference, as expressly ruled in Fries' case State Trials, 596. I also read from page 480 State Trials. Also from pages 589, 191 and 2, of the same authority. And above all from the opinion of Judge Chase on the second trial of Fries, page 634. Now, as to the two witnesses to the overt act. By the overt act I understand the levying of war. That is the overt act, and it must be proved by two witnesses that the war was levied. The connection of the prisoner with

the overt act may be made out by circumstances. I will suppose this case. An insurrection takes place, a treasonable insurrection, and a battle is fought. A party is put upon his trial. Two witnesses have seen him present, but only one saw him actually engaged in the fight; and yet he was found when arrested to have a commission on his person as an officer of the rebel army, would it be possible, the overt act of the battle having been proved by numerous witnesses, for the party to escape merely because two witnesses did not see him engaged in the fight. I will show your honors that the quo animo in Freas' case, was ruled to be susceptible of proof like any other fact. Upon the same point it is decided that words are admissible to show the intent of the party in joining the traitors. See the case of the Republic against Martin in 1st Dallas, 33. And in order to show your Honors that when war is actually levied, any person who is present aiding, abetting, assisting, or inciting, is as guilty of the treason as if he had been an original party. I will refer you to the State Trials, 635.

I have only one word to say, with regard to the character of this conspiracy. I do submit, your honors, that it is no more competent for an assembly of refugee slaves to organize for the purpose of resisting the execution of the laws of the United States, than it would be for a company of white men; and that if there be an armed assembly of colored persons, whether free or fugitive slaves, to resist by open force and violence, the execution of the laws of the United States, that every one of them are guilty of treason. It cannot be modified as protecting themselves. But if it be more particularly to protect every fugitive slave who may be in the neighborhood, or in a particular town, from being arrested and carried back into slavery under the laws of the United States, it is just as much treason as if whites had committed it. If in local districts the law was sought to be enforced, and it was successfully resisted, as in this instance, government would have to support its civil process every where with a standing army.

I hold that any combination like this, of colored and white persons, to prevent the execution of the Fugitive Slave Law, is treason. In this particular case, if the jury believe our evidence, this combination and concerted action is not confined to runaway slaves, but extended to free colored persons, and in it are involved at least four white men, Scarlet, Lewis, Castner Hanway, and Jacob Townsend. If, therefore, the jury find that this combination was formed, not merely for the purpose of preventing the legal arrest in a particular case, but was for the purpose of resisting every man who came armed with the process of the United States, to enforce the laws of the United States, in respect to fugitive slaves, and that these parties did in this instance what they only would have done if anybody else had come for his negroes; that the exhibition of the warrants by Kline, did not make any difference or arrest that organization, which was antagonistic and hostile to the execution of the laws of the United States, then it is a treasonable assembly, and being designed to be attended by force, it is a levying of war, and the parties are all involved in the guilt of treason. I do not know that I can add any thing more to the law of the case. I am satisfied that your honors have sufficiently investigated it, and I can but add little to the researches of the Court upon this question. In conclusion, I would observe, that if this armed resistance, by a band of one hundred men, be not treason, because the object and design are not public, then an army of ten thousand blacks may be raised in the free States for armed resistance to this law of Congress, and it would not be a case of treason.

Mr. John M. Read, on behalf of the defence, spoke as follows:

May it please your Honors, and Gentlemen of the Jury—

The evidence on both sides having closed, a very long, elaborate, and very able speech, has been just finished by my learned friend the Attorney-General of the State of Maryland on the part of the prosecution. To his very eloquent remarks I listened with great attention, but I must confess I was entirely taken by surprise by one of his positions, which he pressed with great vehemence and force, and that was that the Fugitive Slave Law was unconstitutional. I never expected to hear from a Southern man, that a law framed and passed by their own votes, and intended to secure their property in three millions of human beings, was not the law of the land; but that they were bound to look only to the provisions of the Constitution, stripped of all laws made to carry it into execution, and under the Constitution alone, without law, and against the express enactments of the Fugitive Slave Law, to take their property by force wherever they can find it.

I never expected to hear such a proposition gravely stated on the part of the prosecution, especially in a Court of the United States, and in a proceeding where a preliminary question was put by the counsel of the Government to the jurors, whether they had formed an opinion that this Act of Congress was unconstitutional. I understand it to be the foundation of this prosecution, that there are two laws of the United States, to prevent the execution of which, Castner Hanway has levied war against the general Government. This is the crime for which he is now on trial; and the overt acts laid in the indictment, are merely those open deeds which are the evidence of the actual levying of war, and which must be proved by two witnesses to fix the charge of treason upon the prisoner at the bar.

I will explain what I mean, for I do think if such doctrines are to be preached in Pennsylvania—(Mr. Brent here interrupted Mr. Read, and said, I am unwilling that my position shall be misunderstood by the gentleman. I merely desire to define my position; I never said aught that looked to such an expression of opinion, that the Fugitive Slave Law was unconstitutional. I said it was merely an additional security, perfectly legitimate and constitutional, and an additional security to that great right of recapture and repossession which the master had

under the Constitution itself.) Mr. Read—Now the gentleman is correct no doubt as to what he thinks he said, but I call the attention of the Court and jury to the provisions of the Constitution and of the Fugitive Slave Law, and to the rights of the master under them, and the alleged exercise of those rights by kidnappers in the case of an unprotected female, Mrs. Chamberlain. I understood the learned Attorney-General of the State of Maryland, whom I am proud to call my friend, to contend that this gross outrage upon the sanctity of the private dwelling of a citizen of Pennsylvania, was legally committed under this clause of the Constitution, although neither the master nor his attorney were present—the actors in it had no warrant or authority of any kind from any one—and the man was beaten, wounded, tied, and carried into perpetual slavery, without even the form of a hearing before a Commissioner or Judge of the United States. (Mr. Brent, "He was a slave!") Slave or freeman—does that give any man a power not to be controlled by the constituted authorities of the country? Does it authorize him to go into the peaceful and quiet dwelling of a citizen of Pennsylvania, under cover of night, with an armed force, no master present, and with no process of law, strike down the light, seize the unoffending black by the throat, put pistols to his head, and terrify a helpless and unprotected family? Does it authorize a band of kidnappers, man-stealers by profession, some of whom have just emerged from the walls of a prison, thus to violate the sanctity of a private dwelling, in order to take this poor and defenceless human being, carry him into a slave State, and sell him into perpetual slavery?

If that is the construction put upon the Fugitive Slave Law by our Southern brethren, instead of its being a measure of peace between the North and the South, it will be only an element of discord; and I do say, that it will never be submitted to in the State of Pennsylvania. We hold ourselves bound by the Constitution and by the laws of the land. We have told the Court in advance that we never intended to dispute the constitutionality of this law, and we shall hold the United States and the State of Maryland to the same sound doctrine.

We do not go to the jury upon the ground that this law is unconstitutional, but upon the only true principle that our client, our injured client, who has been torn from his family and friends and immured in a dungeon, his little property swept away, and with no earthly treasure left save a beloved partner, who feels for him in the hour of his deepest affliction, is as innocent and pure as any man in this Court-room.

If we in Pennsylvania are bound to obey the Fugitive Slave Law, is not the Southern master bound to obey it also? Has he the right secured to him by the Constitution, that in the darkest midnight he may enter into the private dwelling of a citizen of Pennsylvania, and proceed with violence and outrage to enforce his alleged rights? and is this what the Supreme Court of the United States in Prigg *vs.* The Commonwealth, calls a peaceable manner? Is not the old man unable to protect himself, insulted and pushed aside, while the poor frantic female rushes down to carry her father up stairs from the unfeeling ruffians, who have violated the sanctity of her fireside?

Such is not the law of the land. Further, the Southern master who comes for his slave, when he has seized him, is bound to carry him before a Commissioner or Judge of the United States, and to prove his property according to the forms of law. What was the avowed object of passing this law? The object, as far as I could understand it, was not only to secure the rights of property to the South, but to protect free colored people, in a free or slave State, from being carried off into slavery.

The position advanced by the learned gentleman in relation to this scandalous outrage upon the rights of a citizen of Pennsylvania, and this equally gross violation of the enactments of the Fugitive Slave Law, is not the law of the land; and, I say with entire freedom, that if I had been in that house, I would have thought myself perfectly justified in doing what is frequently done in the Southern States, in shooting down any one of these lawless miscreants—and yet it is charged as a fault upon the people of Lancaster county that these men are not prosecuted. How many peaceable citizens dare not prosecute? Gentlemen of the Jury, nearly all of you live in the country—you wish to prosecute a desperate villain, and at midnight your barn is burned down; is not that enough to deter a farmer? Is he not only to have a band of reckless villains in his neighborhood, but also to be taunted that he does not apply to the law, when he knows it would be the signal to these convicts from the Penitentiary to put the torch to his stacks or to his barn.

Why were not the actors in this criminal outrage brought here by the United States, and placed upon the stand to give some color to the unsupported assertions on the part of the government, that the man thus kidnapped at Chamberlain's, was a slave? Simply because they would have shown you, that these men were not the masters—no, nor the attorneys of the masters—that they had no warrant of any kind to arrest him, and that without law and against the law, they had carried off a man whom the laws of Pennsylvania presumes to be free until he is proved otherwise, treated him with crying inhumanity, and dragged him across the line into a slave State, without allowing a single individual the opportunity to investigate the case, and to restore him to that liberty to which he was justly entitled.

These, and such as these, are the men who take away from their Honors and the Commissioner all power of examining into the facts of these disgraceful violations of a public Act of Congress, boldly saying we will violate the Fugitive Slave Law, whenever and wherever we please, and if you don't turn negro-catcher and assist us, you are guilty of treason; we will indict you, and will come here with the whole force of the State of Maryland, and try to convict you of this most heinous offence against the United States.

Now, gentlemen of the jury, this is not the mode in which either the laws of the land are to be executed, or a case of this solemn interest is to be tried. I have had in the course of my professional life, humble as I am, occasion to fill two posts, calling upon me to exercise an official discretion in criminal cases, once on the part of the United States, and once on the part of the Commonwealth of Pennsylvania, and I have never thought it my dnty to press for a conviction unless I sincerely believed the individual guilty. I have never thought it necessary or proper on the part of the prosecution, to spread before a jury every fact that made against a prisoner, and not to give him the full effect of those which made for him. I distinguish entirely between the duty of a prosecuting officer and that of the counsel in civil cases; the one acts on the part of the government, and the other on the part of his private client.

What, on the part of the United States—a great country—spreading from the Atlantic to the Pacific—from Mexico to Canada—and including the most valuable portion of this Western Continent—the only really free country in existence—what is the object of a public prosecution?

Not vengeance, not blood, not persecution, but simply and strictly justice! The United States have no right to ask for more than justice; they have not the right for some fancied violation of the Constitution to hang a man, to sacrifice an innocent individual on the altar of the Union—for that I understand is the real argument on the part of the prosecution. An argument, which begins not here, nor in regard to this transaction, but hundreds of miles away, for the purpose of imbuing this court and jury with sentiments and feelings wholly foreign to this case, and then to ask them in accordance with these sentiments and feelings to convict this innocent man of the highest crime known to the law.

I had intended, as I always do, and as I hope to do upon the present occasion, to commence according to the best of my ability to discuss first, the question of law; second, the application of the law to the evidence; and then in consequence of the course pursued on the part of the United States, I did intend to say something with regard to our brethren of the South.

We are told he is kind in his feelings towards the slave—that the laws of the Southern States are kind to the free negroes—and that under all the circumstances the slave is in a state, which, as described in one branch of the national legislature, is infinitely happier than that of the free farmer of Pennsylvania.

I have never considered slavery a blessing, and I trust I never shall. I know that in some States, recently, it has been publicly voted to be an element of wealth and of social and political power; but that is a view of the subject with which I can never concur. Yet at this moment, and at all times, I am ready to render to our Southern brethren any justice, and to extend to them the right hand of fellowship.

But the question here is—not—what is necessary to preserve the Union—for about that I have no more doubt than if not a word had ever been said against it. I have lived long enough to know that it does not depend upon a few politicians, nor upon a few slaveholders, nor upon a few capitalists. It depends only upon the true sovereigns in this country—the people; as long as they are sound, I care not what the politicians say, nor how they fret away a few hours in making inflammatory speeches to re-elect them to Congress, and give them their eight dollars a day.

Notwithstanding all these speeches and threats of secession and dissolution, no one ever heard of a member leaving his seat, giving up his per diem and mileage, and returning in patriotic dignity to his constituents. On the contrary, the greater the apparent excitement, the more threats uttered of an immediate dissolution on some Saturday which never arrives, the longer is the session of Congress, and the more public money is despairingly received by the bawling advocates of theoretical disunion.

Threaten disunion because we will not enforce the Fugitive Slave Law! We will enforce it; but we will not permit any Southern master to come into Pennsylvania, and in violation of law, and of the rights of one of our citizens, to tear away his slave, and contrary to the express provisions of the Fugitive Slave Law, to carry him into slavery. Do you know what are the laws of other States?

In Virginia no such thing can be done. You cannot search a man's house there for a harbored runaway slave without a proper warrant, issued on complaint on oath by a justice to the sheriff or other officer, commanding him, if issued by one justice, to search in the day time, and if issued by two justices, to search either in the day or night the place designated. That is the law of Virginia, placing fugitive slaves on the same footing as other property, and giving no larger rights to the master.

Are we not to have the benefits of the Constitution extended to us in Pennsylvania, although we did not at first approve of this law; or are they to be reserved entirely for the people of the South? And are they (because it suits their pleasure) to take away individuals from Pennsylvania in the teeth of an Act of Congress? How do we know where this poor black man was carried to? How do we know that he was a slave? I understand the learned gentleman to say he was a slave because he came from Maryland. There are 74,077 free negroes in Maryland. When they leave the State of Maryland, they cannot return, and when they reach Pennsylvania they are transmuted into slaves because they come from Maryland. Is that the doctrine contended for? They have 90,368 slaves and 74,077 free blacks. They have fewer slaves now than they had at the adoption of the Federal Constitution, and this reduction is gradually going on, and yet the argument is, if a free negro comes from Maryland into Pennsylvania, he is a slave. What is to become of these 74,077 free negroes? What is to become of the presumption in Pennsylvania, that every man is

free? In Maryland, every one who has the fifteenth part of a black shade in his blood, however white his skin may be, is presumed to be a slave, because such is the law of that State. We require free papers in Pennsylvania! No, we require no such thing, because we have not the same state of society which exists in the South. A state of society of which you know nothing, but of which these laws tell their own story.

We in Pennsylvania believe every colored man to be free until he is proved to be a slave. It is not our business to inquire his position when he comes from Maryland—the probability is, he is a free man. If a slave, his master will come after him; and every man for whom the master has not come, we presume to be free.

But I understand the State of Maryland has no laws adverse to freedom. Can a free negro leave that State and come into Pennsylvania, and go back again without being put in jail? When a poor fellow, a free negro, goes out of the State, and they carry him back again, they make a slave out of him, because the laws of Maryland say a colored man is presumed to be a slave unless he can prove himself to be free.

I have the materials by me to show that if a free negro goes into Maryland he is put in jail, and fined $25, and if he cannot pay that sum and the jail fees, they sell him—this free man—into perpetual slavery.

Let us consider then, that we have a duty to perform here in Pennsylvania. We have a free colored population of 53,201, and we are as much bound to protect them, humble and powerless as they are, as any of our other citizens. We are the more bound to shield this defenceless class from injustice and oppression, because the executive, legislative, and judicial departments of the government are ours—we make, expound, and execute the laws—the judges, the juries, and the courts are ours, and we are responsible to God and man for the faithful administration of these great trusts.

Has Pennsylvania, then, no right to preserve unimpaired the liberty of her free colored citizens? My learned friend seems to think she has not, but that on the contrary, when a person from Maryland comes and lays his hands upon any black man he pleases, no inquiry is to be permitted, and the alleged master, by virtue of the clause in the Constitution, has only to take him at once into Maryland, and then he becomes a slave forever.

This doctrine will not suit the meridian of Pennsylvania, and it can only be supported upon the ground that the Fugitive Slave Law is unconstitutional, and that all its provisions are an entire nullity.

But we have a step further to go in the liberality of Maryland to the free colored citizens of other States. You may, as I have already said, pay the fine and jail fees the first time, and if the poor free negro is seduced a second time across the line by the acts of kidnappers, the fine is $500, and if you cannot raise that sum, he is sold into slavery, carried off to a Southern market, and that is the last you hear of him. This is not fancy, but pure, solid fact, and took place under a law which some of the best lawyers even in Maryland think to be unconstitutional, and which all men must regard as contrary to the first principles of common humanity.

Now, have we nothing to complain of in regard to our sister State of Maryland? Before my learned friend was its Attorney-General, requisitions have been made for kidnappers who had stolen free people from Pennsylvania, but they have been uniformly refused. The instances are well known, and one of the individuals is a professional kidnapper, who deals in human flesh, and who dare not come into Pennsylvania, where his crimes would be punished with the utmost severity of the law.

The instance I have mentioned under the Maryland laws, was that of a poor half-deranged, half-witted free negro, who was seduced into that State under the guidance of this man-stealer, was bought by him, sold by him, and transported to the South, although a free man by the laws both of Pennsylvania and Maryland.

By the Revised Code of Virginia of 1849, a statutory reward is offered for runaway slaves by which the person arresting and delivering to the owner or his agent or a jailer, a runaway slave, if taken in any slaveholding State, not more than fifty miles from the place of residence of the master, is entitled to $20, and if taken in any non-slaveholding State, and the same distance, to $100, with a mileage of ten cents a mile, so that the temptation is held out to go into a free State and carry off a negro without warrant, authority or hearing; and if a mistake in identity should be made, it can be corrected by the kidnapper selling him for a Southern market.

There is still another question. The original provision of the Constitution was made for all the States, and it is not merely for a slaveholding State upon a non-slaveholding State. Now I should like to know if the slave States strictly enforce the provisions of the Fugitive Slave Law of 1850 among themselves.

Have they no Acts of Assembly or usages contravening that law? If they have, they are violations of the Constitution and of the Fugitive Slave Law, and are of course unconstitutional and void. The Fugitive Slave Law was made to carry into execution this clause of the Constitution; and I understand from my learned friend, that at the time of the adoption of that instrument, a large proportion of the States were slave States. Unless, therefore, the slave States strictly and rigidly pursue the enactments of the Fugitive Slave Law among themselves, they have no right to ask their Northern brethren to obey a law which they every day break in their own persons.

If I am a Southern master, acting under the constitutional provision and the laws made under it, and I go into a free State, I should in exercising my rights obey that Constitution and these laws; the same rule holds good if I go into a slave State, for the Constitution recognizes no difference in this particular, as to the State within whose jurisdiction the claim is made, and I cannot legally seize the man, put him into a wagon, and carry him off without first taking him before a judge or a commissioner of the

United States, and complying with all the requisitions of the Fugitive Slave Law.

Can any one who looks through the South, and at their laws, say that there are not Acts of Assembly in all of them contravening the Fugitive Slave Law, and which should be immediately repealed as unconstitutional.

What is good for one is good for the other, and if it is a right for the master to come into the Northern States and ask these laws to be executed, it is certainly proper when he goes into a Southern State to claim a similar right, that the same laws should be as strictly obeyed in the last instance as in the first.

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The Reporter regrets his inability to give the conclusion of MR. READ'S speech, which occupied nearly three days in its delivery, and was marked throughout by eloquence and profound learning, being a thorough and complete dissertation on the law of Treason, and which riveted the attention, not only of the Court and Jury, but of a crowded auditory.

MR. STEVENS, for the defence, declined speaking in the cause, to the disappointment of many who desired to hear him, when

MR. COOPER said:

May it please your Honors: Gentlemen of the Jury—

Since the foundation of the government there has not been submitted to a jury for its decision a question of greater importance, or of more vital and general concern, than that involved in the issue which you have been selected and sworn to try. Not only is the life of a human being at stake upon your verdict, but consequences are likely to flow from it, deeply affecting the peace, harmony and welfare of the Union. At this moment, the people of the opposite sections of the country are painfully alive to the importance of this issue, inasmuch as it is supposed to involve the rights of the one and the obligations of the other, under the law, which the indictment charges the prisoner with traitorously obstructing and opposing. If there were nothing more than the life of a fellow-creature at stake, on the event of the inquiry you have been charged to make, your duty would still be a solemn one; but your resposibilities become painfully enhanced, when the consequences to the country as well as to the prisoner come to be regarded.

The counsel for the prisoner tell you that the Union is in no danger; that its foundations are too deeply and securely laid to be shaken or disturbed by any thing that may be done here. That any single act, would be sufficient to break up the Union, I do not believe. I admit that it is strong; strong in the affections of the people; strong in the associations and memories which cluster about its origin, and above all, in its own intrinsic excellence. A thousand ties, old and new, bind the States together. Their former union to resist oppression and tyranny; their participation in common dangers; the blood of their sons poured out on the same battle fields, and their bones mouldering together in the same earth; their ultimate, mutual triumph; their subsequent progress—these, and an hundred other considerations, constitute ties to bind them together in the bonds of fellowship. Bonds like these cannot be easily sundered; but they may be weakened, and one by one they may be broken in twain. It is true, gentlemen, that the edifice of the Union is a proud and a strong one, its foundations deeply and firmly laid. But proud as it is, strong as it is, and glorious as it stands erect amongst the nations, it must be remembered that it is the work of human hands, and that as human hands constructed it, they may also pull it down. It may be true; it is doubtless true, that there are none strong enough to take hold of its pillars, and Samson-like overturn it at once. But the waves of disaffection, dashing constantly against its base, may undermine it; its columns, though they be of marble, may be broken and defaced; and removing stone by stone, the whole of the glorious structure may be leveled with the earth.

This, gentlemen of the jury, is no mere unmeaning metaphorical declamation; it is a just and simple illustration of the manner by which the ties binding the Union together may be sundered. If it is to be perpetuated, the parties to it must perform their mutual obligations with alacrity. There must be no refusal, no holding back, no hesitancy to comply with the obligations which the constitution imposes. Its framers did not intend that the duties which it enjoined, should be stintedly and hesitatingly performed; but that acting in good faith, the parties to it should cordially fulfill all its requirements. By doing so, peace, harmony and the ancient fellowship which existed between the North and the South may be restored and preserved. By pursuing a contrary course; by a tardy acknowledgment, and a hesitating performance of their duty, one to the other, by the States and the people of the States, mutual confidence will be destroyed, crimination and recrimination will produce discord and alienation, and finally enmity; until at length the Union will come to be regarded as a curse rather than a blessing.

I will not stop, gentlemen, to depict the state of things that would follow its dissolution. Aggressions, wars, conquests; kindred blood shed by kindred hands; and finally, liberty prostrate at the feet of triumphant despotism, will be the last act in the drama of our follies and our crimes. And when once the Union has been broken up and its fragments scattered, who will gather them together and reconstruct them?

But, gentlemen, without further preface, I must proceed to the discussion of the question, immediately occupying your attention; and my object will be to aid you, as far as I can, by a fair and candid examination of the law and the facts involved in the case. In this I will not pursue the example which has been set by the counsel for the prisoner, or by some of them at least. There has been a studied and systematic attempt from the opening of the cause to the present moment, to excite your prejudices against the counsel for the prosecution, especially against those who are denominated, with what propriety I will not say, the representatives of the State of Maryland. One of the counsel for the prisoner, the gentleman who opened the defence, whilst professing a candor which should have scorned to stoop, either to deception or equivocation, and a confidence in his case which requires at your hands, not only a verdict of acquittal, but likewise a certificate of commendation; has nevertheless endeavored to excite your prejudice against the counsel for the prosecution by informing you, that one of them was the representative of the State of Maryland, thirsting for the blood of the prisoner, and distrusting the justice of the government; whilst the other was a Senator, who had left his seat in the body of which he was a member, to come here and ask for the blood of an innocent constituent. Candor, gentlemen, never condescends to unjust and vindictive aspersion; and true confidence never resorts to the inculcation of a base or false prejudice, to accomplish an honest or honorable object.

Can it be possible, gentlemen of the jury, that the counsel who indulged in such a strain of unsustained and unwarranted aspersion, could have seen no other motive on the part of Maryland or her counsel, than a vindictive thirst for blood?

If he could not, he deserves pity rather than reproach; but if believing otherwise, for the purpose of infusing into your minds an improper prejudice, tending to disqualify you from judging calmly and dispassionately between the government and the prisoner. I leave it to you to characterise his conduct, and to decide whether such professions of candor are not like that kind of faith which is followed by no good works.

A generous and candid mind would never have concluded of professional brethren, without some show of proof, that they were the vindictive seekers of innocent blood, or the unscrupulous instruments of a bloodthirsty State malevolence. This charge is a calumny in all its length and breadth, and extends not only to the counsel, but likewise to the patriotic Governor of Maryland, at whose instance they are here. In sending hither the Attorney General of the State, (Mr. Brent) a gentleman as much distinguished for the liberality of his character, his high moral and social worth, as for his ability and learning as a lawyer; and in associating with him the humble individual who is now addressing you, Governor Lowe was moved by no distrust of the government or its officers; by no spirit of vindictiveness, or thirst for blood. Considerations of enlightened policy and enlarged humanity and patriotism were his inducements. Knowing the excited condition of public feeling in his own State, occasioned by the murder of one of its most respectable citizens, and that the people of the South, generally, were painfully alive on the subject, he was anxious to have it in his power to satisfy and quiet any excitement which might be produced by a verdict adverse to their expectations, by the testimony of representatives of his own State, who had participated in the conduct of the cause. For himself, acquainted with the Court, the integrity and learning of the judges, he needed no assurance that the laws would be vindicated, as far as it was in their power to vindicate them. But such an assurance on his part would be of little avail, if a contrary conviction existed in the minds of the people, which he had not the power to remove. To remove such conviction, he was aware that information conveyed to him through the ordinary channel of the public press, would not be sufficient. But if he could refer to the testimony of counsel, who had participated in the trial, as the representatives of his own State, for the fairness with which every thing had been conducted; such testimony would satisfy the public mind, allay and quiet the aroused and excited feelings of the people of Maryland and other Southern states. It is for such reasons as these that Governor Lowe believed it necessary that Maryland should be present at this trial by her counsel; and in view of these reasons, permit me to ask you, gentlemen of the jury, whether his conduct has not been wise and judicious, and marked by a patriotic forecast that entitles him to the respect and confidence of the advocates of peace and harmony, at both ends of the Union? It is an easy thing to float along with the current of events; and in the present state of public feeling it would have been much easier for Governor Lowe to drop into the stream and glide along with it, than to prepare, in case of necessity, to check it or change its course. But he did not look to the subject in this light. He was not moved by consideration of personal convenience or advantage; these had no influence upon his conduct, which was regulated solely by a desire to promote harmony and concord between the conflicting sections of the country. But Governor Lowe needs no vindication at my hands. The fact, that at a period of life when few men have yet entered on their political career, he has already reached the highest station in the gift of his fellow citizens, furnishes the best evidence of his exalted worth. Charges of vindictiveness, whether directly or indirectly preferred, will hardly ever disturb the unanimity of the public voice, which accords to him the character of a wise and patriotic statesman, devoted to the preservation of the constitutional rights of his own State, and the integrity, peace and harmony of the Union. Nor with you, gentlemen, nor with the Court, will the industrious effort of the defence to excite prejudice against the counsel, who represent Maryland, have any effect. We are here, occupying the place we do in the trial, at the instance of the government of the United States, and with the full approbation of the learned District Attorney, (Mr. Ashmead) who sits by my side. And whilst we continue to act with fidelity to the Court, with candor to you, and fairness to the prisoner, what is there to complain of? From our presence, who can suffer injury? Ourselves, were our motives for being here such as are insinuated; but nobody else.

But, gentlemen of the jury, without further preface, I will address myself to the argument of the cause, and endeavor to occupy as little of your time as may be consistent with a clear presentation to you of the law and the facts as they exist in the case. In discussing the law, I shall not go back with the learned gentleman, (Mr. Read) who preceded me, to the dark and troubled periods of English history, when the courts were subservient to the crown, and the laws administered without regard to the rights of the subject. Such precedents as I may think proper to use, drawn from British jurisprudence, will be from an era in its history when the doctrines of Magna Charta, began to find a practical and general application at the hands of the English judges; when the ancient rigor of the law had been moderated and softened by the ameliorating genius of Hale, Foster and Mansfield. I shall hardly, even, think it worth while to defend the character of Lord Coke from the reproach cast upon it by my learned friend. It matters little to us, for the purposes of this trial, whether his morals were good or bad—whether his dispositon was cruel or humane. In vindication of history, it will be enough for me to say, that whatever may have been his character as a man, as a judge he shed lustre upon the jurisprudence of the country.

In his denunciations of the law of treason as understood and administered previous to, and during the arbitrary domination of the Tudors and the Stuarts, I can unite with him cordially.

Nor do I differ with him in regard to many of the more modern cases which he has cited, as having been decided in opposition to precedent, and in violation of the law of treason as existing at the time in England. Indeed, in most that he has said of the English law, and of the construction put upon it by the English judges, I concur. But while I do concur, I shall still be able, I think, to show you from cases decided, both in this country and in England, the authority of which has never been shaken, or even doubted, that to attempt to prevent by force the execution of an Act of Congress, is high treason by levying war, and that without regard to the quantum of force or numbers employed.

By the Constitution, Article 3, Section 3, Ch. 1, treason is defined to consist, "in levying war against the United States, or in adhering to their enemies, giving them aid and comfort." And, in order to convict any one of treason, two witnesses are necessary to each overt act; and on no proof less than that of two witnesses, however conclusive it may be, can any one be convicted, except upon voluntary confession in open court. This is a wise and humane provision, adopted first in England, and transferred from the British statutes into the Constitution and laws of the United States. In violent and arbitrary times, when the will of the sovereign was the law of the courts, convictions on the testimony of one witness, were frequent, even when it was suspected that his testimony was false, or procured by the minions of power, to remove some obnoxious person from the path of the king. If the common people had been the principal objects of royal jealousy and punishment, parliament would probably have been slow to interpose an obstacle between them and it; but as the great barons were the most likely to be suspected of treasonable enterprises, advantage was taken by them of the reign of a more magnanimous sovereign, for the enactment of a law, the better to protect the subject against the influence of the power of the crown. At that period there were many species of treasons, all of them punishable with death; and to charge an obnoxious person with the commission of some one of them, and to procure a witness to swear to his guilt, were easy matters. To prevent this, to secure the life of the individual accused against the effects of perjury, as far as was practicable, without granting immunity to crime, a statute was enacted, providing that no one should thereafter be convicted of treason, except on the testimony of two witnesses. The object of this statute, I need not say, was to prevent a single witness from swearing away the life of a person charged with treason—a political crime easily imputed, easily proved, and punished not only with death, but by attainder and corruption of blood.

As I have already stated, although we have in this country but two kinds of treason, one consisting in levying war against the United States, and the other in adhering to their enemies, giving them aid and comfort, it has, nevertheless, been provided by the Constitution, that no one shall be convicted except on the testimony of two witnesses to each overt act of the same treason. And here, gentlemen of the jury, let me call your attention to the fact, that notwithstanding the counsel for the prisoner have complained loudly, though somewhat indirectly, of the indictment of their client for treason, they have complained of that which constitutes his greatest advantage. Indicted for murder, a single witness would have been enough to convict him; and the intention with which he was present at the deed, would have been inferred from his presence itself, without proof. But being indicted for treason, two witnesses are necessary to his conviction; and from his presence at the overt act, though aiding and abetting in its commission, treason is not necessarily inferable. By this, I mean to say, that in this case it would be easier to convict the prisoner of murder than to convict him of treason, inasmuch as in proving the *corpus delicti*, the offence would be completely made out, if the prosecution were for murder, while it is not so, being for treason. In murder, the killing would constitute the *corpus delicti;* and this being proved, the malice would be inferred. In treason, the overt act constitutes the *corpus delicti;* but in cases like this, the intention is not inferable from mere proof of the overt act. The intention must be proved *aliunde*, that is, by other means. There are, no doubt, cases in which the intention to commit treason would be inferred from the overt act itself; as, for example, if a large body of men, owing allegiance to the country, armed and arrayed in a warlike manner, were to attack, openly, the army, or a portion of the army of the United States, the intention to commit treason would be plainly indicated, and would be inferred from the act, without other proof. But in a case like the present, where the overt act laid in the indictment is not *per se*, treasonable; where it is as consistent with a limited purpose of violating the law, in a particular instance, as with a general purpose of obstructing and nullifying it, proof of the intention with which the overt act was committed, is necessary. Direct evidence of the intention, it is true, is not requisite, and, indeed, is hardly ever to be obtained. But in the circumstances of the case, in the acts of the party charged, his associations, declarations, his conduct at the time, the influence of his presence upon the active agents in the transaction, his deportment afterwards—in some such facts the key to his intention is generally found.

You will see, gentlemen of the jury, from what I have said on this subject, how little ground there is for the complaints of Castner Hanway's counsel, that he was indicted for high treason. Had he been indicted for murder, his conviction would have been comparatively easy. In that case he would have had but twenty peremptory challenges, instead of thirty-five; he would have been entitled to no list of witnesses in advance of his trial, nor to the more important privilege still, of excluding all testimony discovered after its commencement. His punishment, in case of conviction, would be the same in the one case as in the other. Why, then, is it, that you have heard so much of the cruelty and injustice of indicting

this man for treason? It is for the same purpose, and no other, that Maryland is represented as coming here, thirsting for blood and anxious for a victim. But, gentlemen of the jury, dropping all that is extraneous, let us look for the truth in the facts of the case as disclosed by the testimony of the witnesses. To seek the truth is alike your duty and mine; and the truth we are in search of is, whether Castner Hanway, the prisoner at the bar, is guilty or not guilty of the crime of high treason? It matters not what other crimes he has committed, if he be not guilty of treason you must acquit him. To this inquiry, then, let us address ourselves in good faith and in a spirit of candor, above all prejudices, incompatible with our high duties and responsibilities, as well as above every artifice which might be a stumbling-block in the way of the discovery of truth.

The most natural course, and that which I had intended to adopt in the discussion, was to inquire, in the first place, what constitutes treason in levying war, as at present understood in England and the United States, and afterwards to proceed to the examination of the facts, applying to them, as developed, the law as it exists. A suggestion from the Court has, however, induced me to change the order which I had designed to pursue.

The treason with which the prisoner is charged in the indictment, is treason by levying war; and this is the only kind of treason with which we shall have any thing to do in the course of the argument which I propose to address to you. The term or expression "levying war," is not confined to war formally declared or waged; nor does it merely import the employment of an organized force directed against the government, and designed to overthrow it. Any insurrection or rising to resist or prevent by force the execution of any public or general statute of the United States; to attempt to obtain, by intimidation or violence, the repeal of a law, or by force to prevent its operation, is treason by "levying war," according to the best authorities here and in England.

The treason with which the prisoner is charged consists in the overt act, coupled with an intention to obstruct and nullify the law, and not merely with an intention to violate it in a particular instance. The overt act must be proved by two witnesses; but the intention may be deduced from the circumstances connected with the case—from his presence and manner of acting on the occasion, and from his conduct at, before, and after the transaction.

In this case, the overt act consists in the violence committed at Parker's house, in the resistance offered to the execution of the law, the murder of Edward Gorsuch, and the wounding of several of the party, lawfully employed to aid in the capture of his fugitive slaves. The learned counsel, (Mr. Read,) who immediately preceded me, has insisted, with great earnestness and frequency, that the United States have failed to prove the overt act by two witnesses, and that the prosecution must therefore fail. In what does he suppose the overt act consists, if not in the acts of force and violence as contra-distinguished from the intention? By the force of the term, overt act, that which is manifest, tangible, palpable, is signified; and in his speech in defence of Lord George Gordon, indicted for an attempt to obtain by force the repeal of an act of Parliament, Lord Erskine speaks of the overt act as the "open deed"—the physical violence committed by the insurgents.

In his charge to the Grand Jury, in the case of the Northampton Insurgents, Judge Iredell calls the overt act the "actual deed"—meaning the acts of violence and outrage committed by the insurgents in resisting the execution of the law. Does the learned gentleman, (Mr. Read,) when he insists that the overt act has not been proved by two witnesses, mean to say that in treason the overt act does not consist in the acts of open, palpable violence alone, but in these connected with the criminal intention? Does he intend to insist, that the overt act comprehends both the *quo animo* and the deeds of actual violence? If so, why is the term, overt act, used in the Constitution and laws? Why did they not declare that treason, and not merely the overt act of treason, should be proved by the testimony of two witnesses, if the gentleman's construction be the just one? The reason for requiring the overt act to be proved by two witnesses, is perfectly obvious and proper. It was to secure the life of the citizen against the perjury of a single witness; and in requiring two witnesses to the overt act, no necessary impunity was granted to the crime; for the overt act in treason is generally of such a character as to be both cognizable and provable by a number of persons. But to have required two witnesses to prove the intention, would have been to license the commission of treason; and even to require direct proof of the intention by a single witness would, in a great measure, defeat the ends of justice; and hence it is that the intention may be inferred from the acts of the party, either before, at, or after the commission of the overt act.

This being so, how stands the gentleman's assertion that the overt act has not been proved by two witnesses? If the overt act consists in the violence committed at Parker's house, on the morning of the 11th of September—in the murder of Gorsuch, the wounding of his son and nephew, and the chasing away of the officer charged with the execution of the process, it has been proved, not by one or two witnesses, but by eight or nine; and by the witnesses of the prisoner as well as of the prosecution. Henry H. Kline, Dr. Pierce, Joshua and Dickenson Gorsuch, Nicholas Hutchings, Nathan Nelson, Miller Nott, John Nott, and Elijah Lewis, all testify distinctly to the acts of violence and bloodshed committed on the morning of that unfortunate day.

But, gentlemen of the jury, I shall dwell no longer on this part of the case. The overt act has been fully, amply, distinctly proved. The next question is, by whom was it committed? Approaching the neighborhood of Parker's house, on the morning of the 11th of September, about day-break, a negro was discovered, whom Ed-

ward Gorsuch recognizing as one of his slaves, immediately pursued. He fled towards Parker's, followed by officer Kline, Gorsuch, and the rest of the party, numbering seven in all. The negro having entered the house, it was immediately surrounded; and on a demand being made upon the person calling himself the landlord, for the fugitives, it was refused. The house was then entered by the Marshal (Kline) and Edward Gorsuch, the owner of the slaves, and the warrants which had been issued by Commissioner Ingraham were read. The occupants of the house still refusing to surrender the slaves, the Marshal and Gorsuch withdrew from it, the latter commencing a parley with the negroes from the outside. About this time a gun was fired from the window at Mr. Gorsuch, the contents of which almost grazed his person. Before this, missiles had been thrown from the window, one of which struck Dr. Pierce above the right eye, producing a severe contusion. Whilst these things were occurring, a horn was blown from the window of Parker's house by the negroes, and shortly afterwards the prisoner, Castner Hanway, rode up to the bars, situated a small distance from the mouth of the short lane, in the direction of the house. The Marshal, who, during the occurrences which I have last described, had made a feint to send Nicholas Hutchings to the next town for an hundred men, on seeing Hanway at the bars, approached him, showed him his warrants, and required his aid in arresting the fugitives. Hanway refused to assist, but remained at the bars in conversation with the Marshal, during which time several parties of negroes, armed with guns, scythes, corn-cutters, clubs, &c., came up from various directions—some along the lane, some through the fields. A portion of these negroes stopped and loaded their guns, close by where Hanway was sitting on his horse. About this time Elijah Lewis came up; and shortly afterwards the Marshal attempted to withdraw his party from the house. At this period of the transaction, the number of negroes on the ground, according to the testimony of the witnesses, amounted to one hundred or one hundred and fifty, most of whom were armed with some kind of weapons; and it was about this period the violence commenced, that Edward Gorsuch was shot down and inhumanly beaten to death, and that Dickenson and Joshua Gorsuch and Dr. Pierce were wounded, put to flight, and pursued by the infuriated negro mob. In this recital, gentlemen, made for the purpose of showing by whom the overt act was committed, I have designedly omitted many important facts, to which I shall call your attention hereafter. These facts, as I have stated them, are proved by Henry H. Kline, and the whole of the party who accompanied him to the scene of this revolting and bloody tragedy, as well as by several of the prisoner's own witnesses. The commission of the overt act is therefore established beyond controversy; and that some hundred or hundred and fifty persons, principally armed, participated in it, is proved with equal certainty.

The next question is, was there concert or combination? If so, for what purpose?

That the assemblage at Parker's, on the morning of the 11th of September, as well as the violence which was afterwards committed, were the result of previous concert and combination, I do not think a doubt can exist in the mind of any one. Turn back, gentlemen, your attention for a moment to the facts, and then say whether the assemblage at Parker's, and the violence which was committed, were not the result of concert and combination? On the morning of the 11th, before the break of day, as Kline and his party approached the house, a bugle was sounded behind them; horns were heard to blow in the neighborhood, and after they reached the house a horn was blown from the window. What was the object of sounding these horns? The prisoner's counsel tell you they were breakfast horns, blown to call the farmers of the surrounding county to their morning meal! Break of day is an early hour for breakfast; but the season at which people go to work, who are summoned to breakfast at day-break, must be earlier still! But how comes it, if these were breakfast horns, that they congregated a hundred or a hundred and fifty armed men at Parker's, by sunrise, on that particular day? Did they assemble, armed and ready for resistance and bloodshed, by mere chance? Credulity itself would be staggered in believing so.

But, gentlemen of the jury, there is other evidence of concert and combination, and which shows the object of the assemblage at Parker's. Isaiah Clarkson, a leader of the wretches who committed the murder, was abroad before day, on foot, giving notice of the work to be done, and where it was to be done. Elijah Lewis assisted him in arousing the neighborhood; and whilst these two were doing duty on foot, Wm. Scarlett, another of the confederates, was galloping from house to house, summoning those who afterwards appeared at Parker's, in arms. Remembering all this—that bugles were sounded and horns blown; that messengers were flying hither and thither, and that the summons was answered by armed bands, who were ready on the ground at the moment of need, can there be any doubt either of the previous concert, or the object of such concert? The negroes were told that there were kidnappers at Parker's; viz, that there were masters there, in pursuit of their fugitive slaves. Elijah Lewis tells us he gave information to Jacob Wood that the kidnappers were at Parker's, and that he should hasten there; and that masters, pursuing their fugitives, are denominated kidnappers, is shown by the transaction at Chamberlin's, given in evidence on the part of the prisoner. Even the counsel for the prisoner speak of masters as kidnappers, making no distinction between them and professional man-stealers, those miscreants who are hateful both in the sight of God and man.

It is apparent then, is it not, gentlemen, that the object of these men in assembling at Parker's, armed, was to prevent the execution of the law by force and intimidation? It was not to rescue a particular individual, or particular individuals, out of the hands of the law. The

combination was to resist the law itself, and not merely to violate it in a particular case, in reference to a particular individual; for neither the master nor the slaves were known to the confederates. If it had been another master, pursuing a different slave, at another time and place, it is not to be doubted but that their conduct would have been the same. This being the case, the act was treasonable and the actors traitors.

So far in the discussion, gentlemen of the jury, I have relied upon evidence furnished by the defence, or which is unassailed and uncontradicted; and as yet, I have made no attempt to connect Castner Hanway with the transaction, except by the incidental mention of his presence at Parker's, on the morning of the 11th, at the time the overt act was committed. My object, in the course I have pursued, was to show you, by evidence which has not been impeached, that the outrage committed by the persons assembled was treasonable; that their object was to prevent by force and violence the execution of an Act of Congress, and not merely to violate it in a single instance for a particular purpose. Having done this, I shall next proceed to trace the prisoner's connection with the transactions at Parker's house, adducing as I go along, additional facts to show the *quo animo*, or intention of the more active parties in the commission of the overt act—that is, of the parties already referred to, and who were the authors of the murder, and other acts of violence committed in resisting the execution of the law. And in his case, I shall rely, in the first place, as I have done in the case of the others, on the evidence introduced by himself, or which is uncontradicted and unimpeached, for the purpose of ascertaining his connection, and the extent of his participation with the other parties, in the criminal acts committed by them.

In the first place, gentlemen of the jury, it is a well established rule of law, that there are no accessaries in treason. Those who, in murder, arson or other felonies, would be merely accessaries before or after the fact, are principals in treason, liable to all the pains and penalties of principal traitors. Mr. Wharton, in his treatise on American Criminal Law, has expressed a doubt, whether under the Constitution and laws of the United States, this rule of English jurisprudence has not been abrogated; and as authority for the doubt he expresses, he quotes the opinion of Chief Justice Marshall, in the case of the United States vs. Aaron Burr. But on turning to the opinion referred to, it will be found that he recognizes the rule as existing here in all its force. 2 Burr's trial, 403, 4, 5.

Accessaries are of two kinds, viz: before and after the fact. But as it is only the rule which respects accessaries before the fact, to which I shall have occasion to refer, I shall not trouble you by defining both. An accessary before the fact "is he that being *absent* at the time of the felony committed, doth yet procure, counsel or abet another to commit it." But if "one be *present*, and doth counsel or abet a felony, he is a principal felon." I have not, however, called your attention to this rule, for the purpose of showing that Castner Hanway is punishable as an accessary; for having been present, as it is admitted he was, at the time the overt act was committed, he is a principal, and liable as a principal, provided he was there aiding and abeting the objects of the confederate parties.

The next thing, therefore, to be considered, gentlemen, is what is the legal signification of the terms "aiding and abeting?" These are familiar legal terms which have received a judicial interpretation. Foster's Crown Law, a treatise of eminent authority, written after the ancient severity of English criminal jurisprudence had given way before the milder spirit of a more enlightened age, contains numerous illustrations and definitions of these words, and of their signification, both in Statutes and at the Common law. One of the principal illustrations is found in the case of the Earl of Somerset, who was indicted upon the Statute of Philip and Mary, as accessary before the fact to the murder of Sir Thomas Overbury. The only question was, whether the Earl could be said to have "caused, procured, or aided" in the murder, never having seen or conversed with Weston, the principal, who had been incited to the deed by Lady Somerset and Sir Jervis Elwys, but at the instance of the Earl. He was found guilty of murder; and in remarking upon the subject, the author declares, that "the best writers on Crown law agree, that persons procuring or even consenting before-hand, are accessaries before the fact," and of course punishable as principals.

He then proceeds to say, that Lord Coke, in his "comment" on the words, "commandment and aid," as applied to accessaries before the fact, in the Statute of Westminster 1, c. 14, declares that "under this word *command* are comprehended all those who incite, procure, set on, or stir up any to do the fact. And under the word *aid* are comprehended all persons counselling, abeting, plotting, assenting, consenting and encouraging to do the fact, and who are not present when it is committed."

From this authority, gentlemen, you will see, that either to assent or consent to the commission of a felony is to aid in it, and become accessary to it. And if this be true of one who is absent at the commission of the act, and merely an accessary, it cannot be less true of one who is present and therefore a principal. If assenting or consenting to a felony, on the part of one who is absent, involves him in all the guilt of a principal, the assent or consent of one who is present will surely do so likewise.

Lord Hale says, "misprision of felony is concealing a felony which a man knoweth but never consented to; *for if he consented, he is either principal or accessary.*" And in another paragraph, the author, Sir Michael Foster, referring to an indictment for a certain felony, says, "some of the words made use of in the present indictment and in one or other of the Statutes upon which it is founded are, *command, aid,* and *abet;* and the passage I have just cited from Lord Coke showeth, that persons procuring, contriving, or

consenting, come within the words *aid* and *command.*"

From the authorities I have just read you will perceive, gentlemen of the jury, that one who is present, aiding and abeting in the commission of a felony, is a principal; and that if he be present, it does not require any active participation in the criminal transaction to make him a principal party to it, and a sharer in the guilt and punishment. If he counsels, encourages, assents or consents to the act, it is enough; and he becomes at once an aider and abetter, and obnoxious to all the pains and penalties denounced against it. This principle, that he, who present or absent, encourages, or consents to the commission of a crime, becomes a principal party to it being applicable to felonies, acquires additional force in its application to treason, inasmuch as ordinarily, felonies affect but the welfare of individuals, while treason being a crime against government, affects the welfare of nations.

The next question which addresses itself, to the jury, is, what part did Castner Hanway act at the scene of violence and outrage? That he was there present is admitted; that he went there on summons is proved by Elijah Lewis, his own principal witness; that his object in going there was to obstruct and hinder the claimant of a fugitive slave from recovering his property, is next to certain. It is in vain to attempt to cloak his object in going to Parker's under the guise of a wish "to see justice done." That his motive was to prevent the master, whether Gorsuch, or Worthington, or Cockey, or whosoever else he might be, from arresting and carrying away his fugitive slaves, is hardly to be doubted. Lewis only haltingly and hesitatingly denies it; while the whole of Hanway's own conduct goes to prove it. Let us then, gentlemen of the jury, glance for a moment at the prisoner's case as exhibited by the light of his own testimony, or at least, of such as is uncontradicted. What kind of an aspect does it present? You have him on the ground, by sunrise, or about it. His arrival is greeted by huzzas, shouting and the clashing of the weapons of the negroes, who preceded him to the scene of action. Why is this? Why these manifestations of joy at his approach, if it were accidental? Why salute him as an army salutes its chief, if his presence had not some inspiring influence? How does it happen that these armed bands gather around him, and load their guns in his presence without rebuke? Why is it, that divesting himself, even of the commonest feelings of humanity, he said not a word to turn aside the blood-thirsty purpose of the blacks? Can you conceive it possible, gentlemen of the jury, in view of his own conduct, and in view of the conduct of the negroes towards him, that he was either ignorant of the object for which they had assembled themselves together, or that he disapproved of it? On your responsibility as citizens, without yielding totally to the influence of your feelings and sympathies as men, say whether you believe Castner Hanway and the negroes went to Parker's on the morning of the 11th of September with purposes in conflict.

But as yet, gentlemen, I have presented to you in my argument, only a portion of the testimony going to show that Castner Hanway was present at the Christiana tragedy, playing a principal part in it. When it is all before you, you will have no doubt that he was there, an aider and abettor in whatever crime was committed. You will remember that Henry W. Kline, the marshal, testifies, that after going to Parker's house, and demanding Mr. Gorsuch's slaves, who were refused, a parley took place and a cessation of hostilities for some fifteen or twenty minutes was agreed to; that at this time the negroes in the house appeared discouraged, and manifested a disposition to yield, which became still more observable after Kline had made a feint to send a messenger to the sheriff at Penningtonville for an additional force. It was very shortly after this that the prisoner, for the first time, appears upon the scene of action; and it will be worth while to note how quickly the aspect of every thing changed on his appearance. As he rode up to the bars situated near the mouth of the short lane, leading to Parker's house, he was received with huzzas and other demonstrations of welcome by the besieged negroes, such as brandishing and clashing their arms, and stamping their guns and clubs on the floor. And although, before his arrival, they were discouraged, down-cast, and apparently ready to give up, yet when he approached they immediately took new heart, became animated, and resolved to hold out to the last. Now, gentlemen, is there nothing to be inferred from this extravagant rejoicing by the negroes at the appearance of Hanway? It is a very small circumstance, in itself, I know; but it is not without significance and importance. Engaged, as they were in knowingly resisting the execution of the laws (for it must be remembered the warrants had been several times read to them) the appearance of a white man would naturally, nay almost certainly inspire the negroes with fear and distrust. How happens it then that the appearance of Castner Hanway was received with shouts of congratulation? There is but one answer to this question, and it is this; that they knew him; that they knew he was with them in sentiment and sympathy; that he approved their conduct and would support it, and not only in what they had done, but in what they proposed to do. Unless they had known all this, he would have been received in silence, cautiously and with distrust. When I say they knew that Castner Hanway approved their conduct, and would support it, not only in what they had done, but likewise in what they proposed to do, I do not mean to say that it was actually concerted between him and them, in advance, that Edward Gorsuch was to be slain, or any special act of the kind done, but I do mean to say their general line of conduct was understood between them; and although Castner Hanway may not have been committed to every incidental and collateral act, he had nevertheless accepted the scheme as a whole and stood bound for all its consequences. Can this be doubted? Is it not the only theory which will explain his conduct and theirs?

Almost immediately after the demonstration of the negroes at the house, and about which I

have just spoken, the marshal, at the suggestion of Mr. Gorsuch, approached Hanway at the bars, and commenced a conversation with him by asking him who he was, and at the same time showing him his warrants for the apprehension of the fugitives. To the question of Kline, asking the prisoner who he was, the latter answered, "that is none of your business." I refer to this to show the temper in which he came to the scene of action; and to show further, that if his object in going there was what his principal witness, Elisha Lewis, declared it to be, that "of seeing justice done," his frame of mind was not such as to qualify him to discharge the duty, which he had taken upon himself, in a very impartial manner.

Whilst the conversation was in progress between Kline and Hanway at the bars, and shortly after the arrival of the latter, several groups of negroes, armed as before stated, came up from various directions, a portion of them halting near him, where they loaded their guns and prepared for the onslaught which resulted in the death of Mr. Gorsuch. Kline, after showing him the warrants, which he read and handed to Elijah Lewis, who had come up in the meantime, requested him to assist in executing them. Hanway positively refused to assist, declaring in answer to the demand made upon him to do so, that "the negroes had a right to defend themselves; that the party need not come there to make arrests; and that they had better clear out or there would be blood spilt." This conversation all passed in the presence of the negroes, who were standing around armed, ready for the attack on the party which Castner Hanway in his mind, had devoted to destruction. Am I not justifiable in saying this party was devoted to destruction—that Castner Hanway, had in his mind, devoted it to destruction. If he has not, why was it that he sat on his horse, whilst the negroes were about him loading their guns, without uttering a single word in rebuke of their bloody purpose—a purpose which all their acts indicated in advance. Not only did he not rebuke them; but on the other hand, used language which was calculated to inflame them, and hurry them on to the execution of the bloody deed which they afterwards committed. The blood of Edward Gorsuch is on the skirts of the white men, who declared in the presence of the negroes, "that they had a right to defend themselves," against those who were attempting to arrest the slaves. The breaking down of the law, and the murder of an unoffending citizen, must lie for ever as a stumbling block at the door of Castner Hanway! A word from the leader, whose appearance was announced by shouts of congratulation, would in all probability have moderated the bloody purpose, or have entirely turned it aside. But no word counselling obedience to the laws was spoken; no appeal to their humanity was made; no caution given; no attempt of any kind to turn them from their purpose. On the contrary, they were told in substance, that they had a right to defend themselves; and when they heard Castner Hanway say to Kline, that he and his party had better clear out, or there would be blood spilt, is it at all wonderful, if these people, excited before, should have construed this remark into a suggestion to them, to spill blood?

But I have not yet called your attention to all that was said by Hanway, on the occasion referred to, which was calculated to beget in the minds of the negroes, a contempt for the law, and a disposition to resist it. When Kline requested him to assist, and was explaining to him that the act of Congress required him to do so, he answered, that "he did not care for the act of Congress, or any other law." This declaration, made in the hearing of the negroes, could have no other tendency than to ensure its violation. Excited, ignorant, scarcely aware of the consequences to themselves or others, of resisting the laws of the United States, such a remark, made by a white man, in whom it is evident, from the testimony, they had great confidence, was well calculated to produce the violence which ensued, and ensued almost immediately. Shortly after this declaration, which was followed by the one I have referred to before, and which was to the effect, that "the negroes had a right to defend themselves, and that Kline and his party had better clear out, or there would be blood spilt," Hanway moved his horse nearer to the group of negroes, and stooping towards them, said something in a low voice. Immediately after this, having walked his horse across the lane, the firing on the part of the negroes commenced, and was kept up until the party which had accompanied Gorsuch on this ill-fated expedition, had been killed, wounded, or dispersed.

In view of all the facts, was Hanway present, aiding and abetting? Or, in other words, being present, did he assent or consent to what was done? This is the question, gentlemen of the jury, which in view of all the facts and circumstances of the case, you must decide—having first decided, that the object of those who assembled at Parker's, killed Edward Gorsuch, and dispersed the officer and his party, was by force to obstruct and render nugatory an act of the Congress of the United States. A brief recapitulation of the facts may aid you in deciding the question. That Castner Hanway was present at Parker's, is not denied; it is admitted that he arrived there about sunrise; that he went on horseback, and was soon followed there by several groups of negroes, all of them armed; that before his arrival, the negroes in the house were dispirited, and appeared to be on the point of yielding; that his approach was hailed by them with acclamations and rejoicing; that his presence gave them new heart and encouragement; that a group of negroes who followed him to the ground, halted near him, and loaded their guns in his presence without rebuke; that having been called on by the officer to aid, he refused to do so; he said the negroes had a right to defend themselves; that the officer need not go there to make arrests; that the party had better clear out or blood would be spilled; that he did not care for the Act of Congress or any other law; and finally, that he went to the ground for the purpose of preventing the execution of the law seems to be certain,

without reference to his conduct, as exhibited by the facts which I have just now recapitulated to you. Lewis told him there were kidnappers at Parker's—that is, masters in search of their slaves—without knowing who they were, and of course without telling him who they were. He knew neither masters nor slaves; but went without knowing, to prevent their recapture. It was not then to resist Mr. Gorsuch in particular, nor to aid Josh and Noah in particular, but to prevent the execution of the laws, for whomsoever or against whomsoever its aid might be invoked. Elijah Lewis, at whose instance, it is alleged, Castner Hanway went to the scene of action, does not pretend to say that it was to resist kidnappers in the legal sense of the term, that they went there. The counsel for the prisoner told you, that there had been several cases of real kidnapping in the neighborhood of Christiana; and that in consequence a general feeling of insecurity and alarm prevailed amongst the people. To prove one of these cases, Miller Pennington, a witness, was called; but instead of proving that the case to which he referred, was a case of genuine kidnapping, he furnished very conclusive evidence that it was not. And at a subsequent stage of the trial, you will remember that the counsel for the prisoner themselves, stated that they had never designed to assert, that the negro carried away from Chamberlin's, (the case to which Miller Pennington referred) was a freeman. Thus you see, gentlemen of the jury, that the object of the prisoner in going to Parker's, was to prevent the execution of the law, without knowing who had invoked redress through its instrumentality, or against whom its authority was directed.

But there is other evidence to which your attention has not been called, corroborative of the evidence of participation already given. The day after the transaction, Kline met Hanway and Lewis at Christiana, and said to them, "You white-livered scoundrels you, when I pleaded to you yesterday, like a dog, for my life and the life of my men, and begged you not to let the blacks fire upon us, you turned round and told them to do so." Lewis replied immediately, "I did not," but Hanway said nothing.

You will recollect, gentlemen, Kline states in his testimony, that just before the firing commenced, Hanway moved his horse over towards the group of negroes, and stooping down, said something in a low voice, which he did not hear; and that directly afterwards, having walked his horse across to the other side of the lane, the firing commenced. Kline believed that what Hanway uttered, in a voice too low for him to hear, was an order to the negroes to fire; and he was induced to believe so, I presume, from the circumstance that the firing commenced immediately after the words were spoken, or as soon at least as he could get his horse and himself out of the way. But when he was charged with doing so, if he were not guilty, why did he not deny it? Lewis did so promptly, because, being innocent, it was natural to do so. And why, I repeat, did not Hanway deny it? "Silence is consent." This, gentlemen of the jury, is one of those homely but true sayings, which has settled down into a maxim of the world's wisdom, and is acted upon by all—by judicial tribunals as well as by individuals in the every day transactions of life. Men act upon this principle instinctively. Were I to charge Mr. Martin (one of the jurors) with some base act, of which he is not guilty, he would deny it instantly; and probably resent it besides. More certainly would he do so, if I were to charge him with a crime. Suppose the Sheriff should levy on Mr. Sadler's (one of the jurors) farm, in satisfaction of another man's debt, and sell it to me, Mr. Sadler standing by in silence:—in such a case he would lose his farm; the law would presume that it was not his, because he was silent when he should have spoken out. But this maxim, that "silence is consent," has a further application to this case, to which I desire to call your attention. Hanway we know was present at Parker's house, and some of the acts which have been proved, were done in his presence, as, for example, the loading of the guns by the negroes; and remaining silent in relation to the act, his assent to it, according to this maxim, is implied. That this maxim is consistent with the principles of common sense, and is acted upon in all the transactions of life, and in every department of human affairs, I need not go to books to prove. Without books to prove it, your own experience will commend it to you.

But it has been argued to you that Hanway did speak out, and speak his dissent from the acts and proceedings of the negroes. To prove that he did dissent, the testimony of Elijah Lewis is referred to. He says he heard Hanway exclaim, "Don't shoot, don't shoot; for God's sake don't shoot!" Mr. Lewis is not very explicit as to the time this exclamation was made; and I think you must have remarked that there was something singularly equivocal, if not contradictory, in this part of his testimony. You will remember that he states he had left the ground before the firing commenced, and that Hanway left about the same time, or directly afterwards. If there was no attempt to fire by the negroes while he was there, and he does not say explicitly there was, why the exclamation, "Don't shoot! don't shoot! for God's sake don't shoot!" on the part of Hanway? But if the negroes were really about to shoot, but were so thoroughly under the control of Hanway as to be restrained from their purpose by a word, why did he retire from the ground, leaving the Gorsuches to the bloody fate which he must have seen was impending over their heads? Adopting the view of the case, in which Lewis' testimony seems to present it, the conduct of Hanway in leaving these men, whom he had the power to save, at the mercy of the negroes, thirsting for their blood and ready to shed it, is an outrage upon humanity, worse than that which the negroes afterwards committed. God save me from the salvation brought me by my own witness, he may well exclaim!

But is Mr. Lewis mistaken, and was the exclamation, "Don't shoot, don't shoot," &c., uttered sometime afterwards, when Hanway was retiring along the lane, Dr. Pierce and Joshua Gorsuch following him, the latter wounded and

clinging to his stirrup, begging him for God's sake to take him up, and save him from the fury of the negroes? At this time, as it appears from other testimony, Hanway did make some deprecating exclamations, such as those attributed to him by Mr. Lewis. This was done when the guns of the negroes were pointed on Dr. Pierce and Joshua Gorsuch, who were clinging about his feet, and endeavoring to shelter themselves behind his horse. A ball discharged at one object sometimes strikes another in the neighborhood; and a knowledge of this important fact may have been the motive for the deprecating exclamation, "Don't shoot, for God's sake, don't shoot!" But suppose it was otherwise; and that the exclamation was uttered with a view to save the flying remnant of the Gorsuch party! What then? Is it a strange thing for a victorious leader to sheath the sword and give quarter when the battle is over? Resistance to the execution of the law having been successful previous to the time that Hanway was besought by Pierce and Gorsuch to save them, what object, beyond a gratuitous thirst for blood, could have induced him to refuse them? Adding other victims to the number sacrificed, would not have made the triumph of the confederate parties over the law a whit more complete. Nor did saving Pierce and Gorsuch from the guns and scythes of their pursuers, derogatefrom the force of the facts proved against Hanway. He is indicted for treason; but murder being no necessary ingredient in the crime, interfering to prevent its commission is, therefore, no justification.

The principal testimony in the case, and I believe all that is calculated to establish the two main points of it, viz.: the character and object of the commission of the overt act, and the participation of Castner Hanway in it, having been briefly,but in a connected manner, recalled to your minds, I shall now proceed to notice such portions of the testimony as have been either directly contradicted or otherwise assailed. And, what in reference to this part of the case has appeared the most singular to me, is the fewness and comparative unimportance of the contradictions in the testimony, in material parts. The principal contradictions occur in the testimony of Kline and Lewis; yet even these contradictions are of little importance, except in so far as they show a general inaccuracy of recollection, or carelessness in regard to the truth.

You will remember, gentlemen, that all the material circumstances, sworn to by Henry H. Kline, in relation to the transaction at or about Parker's house, are corroborated by Dr. Pierce, the two Gorsuches, Nicholas Hutchings, and Nathan Nelson. To the arrival of Hanway; the discouragement of the negroes when he came up; the effect of his presence in restoring a spirit of resistance; the fact of being followed shortly by bands of armed negroes, who loaded their guns in his presence without rebuke; his reading the warrants and refusing to assist; his declaration that they need not come there to make arrets; that he made no effort to quell the violence which was menaced—all these facts are proved either by all or a portion of the witnesses I have just named. It is only in relation to the declarations of Hanway, that "he did not care for the Act of Congress, or any other act," and that "the negroes had a right to defend themselves, and that he had better clear out, or there would be blood spilt," that Kline is not corroborated. But how natural is it, from the rest of his conduct, that Hanway should have made these declarations? Did not the whole of his conduct show that he did not care for the act of Congress? and that he was in favor of the negroes defending themselves? Is it not evident from the fact that he made no attempt to inculcate into them a respect for the law, or to restrain them from committing acts of violence? From the testimony of Elijah Lewis it would appear that a single exclamation from Hanway was sufficient to restrain them in their attempts at violence. The exclamation, "Don't shoot, for God's sake don't shoot!" turned aside their weapons, if Lewis is to be believed.

One of the principal contradictions between Kline and Lewis, is in regard to the position of Hanway in the neighborhood of Parker's house. Kline says he rode into the short lane, and stopped at the bars; Lewis denies that he was at the bars, or in the short lane at all. Kline's statement is supported by Dr. Pierce, Joshua and Dickenson Gorsuch, Nicholas Hutchings, and Nathan Nelson, who all swear that Hanway's position was in the short lane, at the bars.

Lewis swears that Kline did not give the warrants to Hanway to read. Kline swears he did; and so do Dr. Pierce, Dickenson Gorsuch, and Nicholas Hutchings.

Lewis swears that before the firing commenced, Kline crossed the fence into the cornfield, and never got back to the scene of action at all. Kline swears that he crossed the fence at the time the firing commenced, in order to save himself; but that he shortly afterwards returned, and finding Dickenson Gorsuch badly wounded, led him up to the woods and set him down by a stump. Dickenson Gorsuch swears that Kline was there and assisted him; and John Nott swears to the same thing.

These are the principal cases of contradiction between Lewis and Kline; and it will be seen wherever a contradiction has occurred between them in relation to facts of which others were cognizant, as well as themselves, that Kline has been uniformly sustained. But another attempt to fix falsehood upon Kline, is based upon the fact, that when he met Hanway and Lewis at Christiana, the day after the outrage at Parker's, he charged them with having incited the negroes to violence. His language on the occasion, as you will remember, was, "You white-livered scoundrels, when yesterday I pleaded to you for my life like a dog, and begged you not to let the blacks fire upon us, you turned round and told them to do it." This, the prisoner's counsel say is false, because Kline, neither in his testimony at Christiana or at Lancaster, pretends that either Hanway or Lewis, ordered the negroes to fire. This is true; Kline did not at either place swear that Hanway or Lewis, ordered the negroes to fire; and he does not now swear that they did. But you may remember Kline swears,

that immediately after Hanway's declaration, that "the negroes had a right to defend themselves," he walked his horse over towards where a group of them was standing, and stooping down said something in a low voice. What was said by Hanway, Kline did not hear; but from the fact that the firing commenced as soon as he had withdrawn to the other side of the lane, he inferred that it was an order to fire; and, accordingly, when he met them together the next day, he charged them both, with what he supposed the one had done; and this he did in the presence of Alderman Reigart and Mr. Proudfoot, who both corroborate his statement in every particular. Now, what is there in this to base a charge of perjury upon? Yet, gentlemen, it is upon discrepancies like this—discrepancies, which when they come to be examined, turn out to be no discrepancies, that Henry H. Kline, is charged with willful, wicked, deliberate, corrupt perjury. It is because he is contradicted by Elijah Lewis, a *particeps criminis* of the prisoner, that the vocabulary of vituperation has been opened, and whole pages of abuse poured upon his head. It is for this reason, too, that the purlieus of the city have been scoured by Jacob Albright, the industrious agent, charged with this part of the defence, for men to swear him down. But, gentlemen, in this city—in any large city, do you suppose it is a difficult matter to find creatures, bred from its corruptions, like reptiles from the slime of the Nile, who are ready at need to asperse and drag down, if possible, to their own level of degradation, the character of the best and purest citizens in the community. A number of such have been found. I will not say that twenty-six such have appeared here for such a purpose; for some of the persons called may have been, and doubtless were honest, upright and conscientious men. But these persons, without their own knowledge, have become the victims of a prejudice, cultivated in secret, but which has borne fruit in public here in the Court. But if Kline has been rudely assailed, has he not been generously sustained, and triumphantly vindicated. Have not the aspersions of his enemies been wiped away entirely by his friends. To counterbalance the twenty-six, who swear that his character for veracity was bad, seventy odd men, many of them gentlemen of the highest respectability, numbering amongst them lawyers, aldermen, mechanics, the Chief Marshal of Police, and many of his subordinates, have come forward to swear that his character was good, and that they would have no hesitation in believing him on oath; and many of these men who have known him for twenty-five or thirty years, had never heard his character for veracity impeached, until after the occurrence of the Christiana outrage. It was then that it became necessary to furbish up rusty recollections, of what his character for veracity had been. The result of the search you have seen on the stand.

But, gentlemen of the jury, what is there in Kline's conduct, that justifies a charge of perjury? Was there a want of candor in his conduct on the stand, whilst testifying in the case? Did he manifest a disposition to volunteer what would aid the prosecution, or to keep back what would aid the defence? There is generally something in the deportment of a witness, which stamps his testimony with the characteristics of truth or falsehood, and that without reference to the fact, whether the testimony is corroborated or not. Kline testified with candor, though under the disadvantage which is inseparable from partial deafness. But what motive could actuate him in the commission of a crime so diabolical as perjury would be in a case like this? In serious matters men act under the influence of motives. And what motive could Kline have to swear away the life of Hanway? What motive can he have in swearing as he has done, if his object be to take away his life? Why, if impelled by malice to commit an act of such damnable atrocity, as that of convicting an innocent man, did he not swear at once to enough to effect his object without doubt. Two or three words added to his testimony, and all question about the intention of the prisoner would have been at an end.

If what he has sworn to is false, why did he not add to it a single sentence, a few words more, to make assurance sure? No scruples of conscience would prevent a man from uttering two or three false words, who has already sworn to a volume of falsehoods. But, gentlemen, I reiterate the question which I asked you before; what motive can Henry H. Kline have in swearing to that which must consign Castner Hanway to an ignominious death upon the scaffold? He can derive no benefit from his conviction; it will make him neither richer nor happier. But, if innocent, Hanway should, nevertheless, be found guilty on Kline's false testimony, what will be the feelings of the latter, if there be remaining in his heart but one single drop of uncorrupted, unpolluted human sympathy? Can there be on earth a man so utterly bad; would even a pupilage in Hell itself deprave him to that point, that in cold blood, deliberately, he would come forward to swear away the life of a fellow creature, under such circumstances as these? I cannot believe it, though the prisoner's counsel may.

Before quitting this branch of the case, it is proper we should examine the testimony of Elijah Lewis, and inquire, whether there be reasons for suspecting him of being biased, or operated on by any considerations likely to incline him to one side or the other. Mr. Lewis is the main witness for the prisoner, and is indicted for the same crime. In his testimony, he states that after notifying Hanway of what was going on at Parker's, they both went there, he across the fields on foot, Castner Hanway by the road on horseback; that they both arrived there about the same time, though Hanway a little in advance; that Hanway never went to the bars, but remained at the end of the lane, where Kline joined them; that he was present during the conversation between Kline and Hanway; that the former did not give the warrants to Hanway, but to him, and that he having forgotten his spectacles handed them to Hanway; that Hanway made none of the declarations imputed to him by Kline; that Kline left before the firing

commenced and did not return; that Hanway did interpose by calling out, "Don't shoot, don't shoot, for God's sake don't shoot!" &c., &c. This is in substance, the amount of Mr. Lewis' testimony. Against the character of Elijah Lewis, I know nothing. He may be, and no doubt is, an honest man in his dealings and intercourse with his neighbors; and he may be, for any thing that I know to the contrary, a man of exemplary veracity. But from his testimony, I infer that he is one of that class of individuals, who fixing their attention on some vice of the times, or on something in religion or government which they deem pernicious, permit themselves to become so wholly absorbed in its contemplation, that they forget there are other vices and wrongs in the world, which claim their notice or need reformation. Seeing but the one evil and regarding no other, it soon assumes in their minds proportions of such a threatening magnitude, that they wonder at any one who fails to see it as the great fountain, from whence every thing that is corrupt and polluted flows. With Elijah Lewis, slavery is the one great evil of the times; and he sees no other, and doubtless wonders how you or I can see any other. The law which recognizes and protects the institution of slavery, although a law of his country, has no binding obligations on his conscience, and he refuses to obey it; and those who do obey it, in certain of its requirements, in his opinion are kidnappers and manstealers. All the unnumbered benefits and blessings which the constitution secures to the country; its marvellous past history; its glorious future destiny, if peace, harmony and the Union be preserved, all are obscured and hidden from his view, by this one provision respecting slavery, for which he is not answerable, and from which he can suffer no injury, could he but make up his mind that he had nothing to do with its origin and as little with its continuance.

Regarding slavery in this light, and Castner Hanway as a martyr to its revengeful spirit, his feelings and prejudices are all strongly enlisted in his favor. These feelings alone would produce a bias unfavorable to the truth, were there nothing else; but unfortunately there are other considerations operating in the same way. I have already informed you that Elijah Lewis is indicted for the same offence as that for which Castner Hanway is now upon his trial. He is, therefore, operated upon by the strongest motives that can influence a human being—by motives of self-preservation. If his testimony should acquit Castner Hanway, Castner Hanway's may be then invoked to acquit him. But this is not all. If Mr. Lewis had sworn before you, to facts unfavorable to Hanway, or proving his guilt, these facts would be given in evidence against him on his own trial. To convict Hanway would convict himself, for the simple reason that acting together in a common design, what would be evidence against one, would be evidence against the other. But even if this were not so, the acquittal of Castner Hanway, would have a most important and favorable bearing in acquitting Lewis and the others, hereafter to be tried.

With such motives to operate on him, is it possible, in the nature of things, that he could testify without bias? The best and wisest men are swayed imperceptibly, but not the less certainly, by their interests. In this case, friendship, prejudice, self-interest amounting to self-preservation, all united to sway Lewis. And not to have yielded argues virtue and firmness more than human. But he did yield. His bias was manifest. And here let us notice some of his mistakes. He swears that Hanway did not go to the bars. Kline, Dr. Pierce, Joshua and Dickenson Gorsuch, Nicholas Hutchings and Nathan Nelson swear that he did. He swears that Kline did not give his warrants to Hanway. Kline, Pierce, Dickenson Gorsuch and Hutchings swear he did. He swears that Hanway made none of the declarations imputed to him by Kline. Dr. Pierce, as well as Kline, swears that he did say, "You need not come here to make arrests." He swears that Kline left the ground at Parker's before the firing commenced, and did not return. Kline, Dickenson Gorsuch and John Nott say he did return, and finding Dickenson Gorsuch badly wounded he led him up to the woods and got water for him. These are some of the contradictions; and there are others which I will not weary you by attempting to trace. These mistakes, I would be willing to set down to the score of fear; but there are other portions of his conduct for which charity can scarcely find an extenuating motive. To refuse a drink of water to a wounded man, sick and almost dying, exhibits such a want of humanity and ordinary sympathy, as to be repugnant to every generous feeling of human nature. Even enemies, meeting and striving on the field of battle till one or the other falls, are generally ready to proffer aid and sympathy to the suffering and the fallen. But Mr. Lewis, it seems, is above these amiable inconsistencies. The war that he wages, he wages to the death, thinking, I suppose, that if it be worth while to endeavor to kill, it would be folly to endeavor to cure. But I do not desire to pursue this subject farther. I have shown that there are motives in Mr. Lewis' case, too powerful to be resisted even by the best and firmest of men. This is enough for my purpose; I shall, therefore, hasten on, as rapidly as I can, to a conclusion.

There are many other facts in this case, to which I can afford but a passing notice. The state of public sentiment in the neighborhood in which this outrage against the laws of the country was committed, is very clearly manifested, not by the testimony of any particular witness, nor in regard to any act done by any particular individual, or number of individuals, but by the testimony of all combined, in reference to all that was done. A premeditated silence is observed by every body in the vicinity of the outrage; and it is only by accident that any fact comes to be disclosed. A great outrage, like that at Christiana, accompanied by murder, is generally followed by intense excitement; the indignation of the people is aroused, and the perpetrators of the deed pursued and brought to justice. But in this instance, a persevering silence has been maintained. Men are indisposed

to give information of facts in their possession. A respectable physician, who was called on the day of the outrage to dress the wounds of certain negroes, who participated in its commission, never mentioned the circumstance to any body. He extracted the bullets from their wounds, without asking when, where, or how they had received them. How does it happen that he had no curiosity to know how they came by their wounds? How does it come that he felt no interest in ascertaining whether the laws had been violated or not? Is it to be doubted that this man knew all about the transaction? Who will believe that he did not know how the negroes came by their wounds? Who will believe that he did not know they received them in the fight at Parker's? He was silent because he sympathized with the murderers, if not in the murder, at least in the violation and obstruction of the laws. As a good citizen, he ought to have communicated the knowledge he possessed in relation to some of the perpetrators of the crime, in order that both they and their accomplices might be brought to justice.

But to show further the state of feeling in the neighborhood, you need but look at the Coroner's inquest, held upon the body of Edward Gorsuch. It shows, that death did not arrest the feelings of the men concerned in it. It was not enough, that he should be murdered, whilst in the lawful pursuit of his fugitives; but it seems to have been considered necessary for some reason, perhaps in justification of his murderers, that his memory should be aspersed and villified. If there was no other evidence of the spirit prevailing in the neighborhood of Christiana than that furnished by this Coroner's inquest, it would of itself be sufficient to prove that the bloody deed had more sympathizers than denouncers; more who were ready to excuse, than were ready either to do justice to the dead or the living. The inquisition sets out with a lie, a shameless, inexcusable lie. It states in substance, that Mr. Gorsuch came to his death by a riotous attack on a family of colored persons. Who testified to this fact? On whose evidence was this wicked libel, on the memory of Edward Gorsuch, inserted in the finding of the inquest? There was no such evidence; and yet twelve men, denominated "good and lawful men," without the warrant of evidence, in order to excuse those with whom they sympathized, inserted it.

Is it wonderful, in such a state of feeling, leading men to disregard their oaths as well as all the commonest proprieties, that it should be difficult to find direct evidence of a previous conspiracy? But truth almost always vindicates itself; and here, in the very effort to conceal it, it bursts forth on all sides, to put to shame and bring to punishment the perpetrators of this atrocious deed. The very fact that nobody appears to know any thing; that every body (with an honorable exception or two,) endeavors to conceal every thing; that perjury, slander of the dead, faithlessness to every duty of men and citizens are resorted to, shows that there was a conspiracy, not only to do the deed but to shelter the perpetrators as far as possible? Why, I repeat, if it were otherwise, was it necessary that a lying verdict, casting reproach and blame upon the dead, should have been found by the Coroner's inquest? Why was it, that after dressing the wounds of negroes who had been engaged in the fight, Dr. Cain made no disclosure? A murder had been committed; and a good citizen would have been anxious to bring the guilty parties to justice; but this man did not ask when, where, or how these negroes' wounds had been received! Why did he not? Because all had been arranged beforehand. This checked the natural curiosity of the worthy doctor, and induced him to do his work with closed mouth and ears. This too is the reason why Scarlett and Lewis passed each other without speaking. It had been agreed on beforehand that there should be no disclosures. If it were otherwise, do you believe, gentlemen of the jury, that after such a battle had been fought, in a place usually so secluded, two neighbors would have met, both deeply interested in the result, and not have spoken of the transaction? Nobody will believe, that these two men, who had both been engaged in marshaling the bands for that very contest, could have met before the echoes of the guns had died away in the hills, and not have inquired which party had won the day, unless they had previously agreed not to speak of it.

With both of them it was a day of importance—a great day—a day on which they were to make an organized effort to resist the laws of their country, and yet they spoke not to each other when the deeds of the day were over, and they had met after the victory. Nobody will believe this, unless it was by previous concert their lips were closed.

From the disposition manifested by these men, you will see how difficult a thing it was to procure testimony, either of the acts or intentions of the parties to this confederacy to resist the laws and prevent their execution. The mouth of every man was closed by concert. But it is always so. Conspiracies to commit treason are plotted in secret. The conspirators go not into public places, either to contrive or mature their projects. Silence is necessary both to their success and security; and hence, silence is always observed as far as it is possible. This constitutes the difficulty in showing the motives of men engaged in conspiracies of any kind. Their intentions are confined to their own bosoms, and to the bosoms of their confederates in crime. It belongs not to men to read the heart; but it belongs to them to interpret actions, and to judge from them the intentions. So in this case, although we have it not from the lips of Castner Hanway, that his object in going to Parker's was to prevent the execution of the laws, and commit treason against the United States, his conduct and his acts declare his intentions as conclusively as language could have done. Being present, seeing preparations made to overbear the authority of the law by violence; refusing to aid in its execution, on being required to do so, coupled with certain declarations which casually dropped from him, furnish evidence of his intentions not to be mis-

taken. It has been contended, on the part of the defence, that it is no part of the duty of a good citizen to aid in capturing fugitive slaves, and that Castner Hanway was justifiable in refusing. I, gentlemen, do not so read the law. In my judgment, it is every man's duty to yield obedience to the law. By obeying the fugitive slave law, I become responsible for none of the evils of slavery. But if I may refuse obedience to it because I happen to disapprove it, some one else may refuse obedience to another law, which he professes to disapprove; and thus anarchy, confusion and violence may be introduced in the government, under pretence that individuals are conscientiously opposed to the execution of its laws. I am utterly, entirely and forever opposed to the recognition of any such monstrous doctrines—doctrines at once subversive of all law, order and security. No, gentlemen, such doctrines I am sure can never receive your sanction; and I take issue with the counsel for the prisoner, when they declare that it is no part of the duty of a good citizen to aid in the execution of the fugitive slave law, on being required to do so.

[Mr. Cuyler. These are not the sentiments of the defence. It has not been conducted on the principle that the fugitive slave law is not binding upon all.]

Mr. Cooper: I may have been mistaken; but I thought it had been contended by Mr. Lewis, that there was no obligation on the part of either Hanway or Lewis, although required to do so, to aid the officer in the capture of Gorsuch's slaves. As the gentleman denies it, however, I presume I was mistaken. Well, be it so. It is then admitted, that it was the duty of Hanway to assist; but he refused to assist. The defence has then passed from one horn of the dilemma to impale itself more completely on the other.

But, gentlemen of the jury, let us now proceed to inquire, what constitutes treason? In the outset, I had intended, as being most natural, to commence with the law and end with the facts; but a suggestion from the court induced me to change the order of presenting the case to you. The order, however, matters but little; and you will be able to comprehend the whole case, quite as well in this mode of presenting it, as in the other, which I had at first proposed.

As I remarked in the beginning of the discussion, I have no disposition to go back into the dark ages of the English law, to grope among its bloody and conflicting precedents for the purpose of deducing rules applicable to the case at the bar. In early and barbarous times, under the reign of arbitrary Sovereigns, the rules of courts and the provisions of law, were alike ineffectual for the protection of a person, who had incurred royal displeasure. Dependent upon the Crown for their places, the judges, in cases between it and a subject, oftener perverted than vindicated justice. Occasionally, some strong, just man held the scales of justice steady, even where the king was a party. This, however, was a rare occurrence; and the consequence is that the administration of British criminal jurisprudence, especially in great State cases, is stained with the blood, both of men and women, who were confessedly innocent of the crimes imputed to them. But since the revolution of 1688, the practical principle regulating criminal trials has been entirely reversed. Before that period, courts acted on the presumption that a person charged with a crime, was guilty, until his innocence was proved. Since then, the accused is presumed innocent until his guilt is established by a verdict against him.

But it is not only in this respect that the criminal law of England has undergone a change. The mode of procedure in the Criminal courts, has been greatly modified; important privileges have been secured to the accused, that he is no no longer, as was formerly the case, in nearly as much danger, innocent or guilty. Formerly he had to make his defence without the aid of counsel; and without the privilege of having witnesses, in his favor, examined on oath. Now he is allowed counsel, process to bring forward his witnesses, and enjoys in all respects the same rights that are enjoyed by the Crown. It is from this latter period, that I shall draw such English precedents as I propose to use; and I shall avoid all those, referred to yesterday by the learned gentleman, (Mr. Read) as having been over-ruled by later decisions. Indeed, I should not resort to English authority at all, were it not for the fact that they shed light on terms used in defining treason by the Constitution and the laws of the United States. Many of the framers of our own Constitution were lawyers, who had drawn their ideas of treason from the British Statutes, and the works of British elementary writers on the subject. One of them, a namesake and relative of the juror in my eye, (Mr. Wilson) was one of the most eminent lawyers of his day; and he and other lawyers in the convention, took a distinguished part in framing the article which defines treason. Under such circumstances it cannot be doubted that the terms used in the article defining treason, bear the same signification in the Constitution, as they do in the British Statutes and British law books. This being the case, we can hardly help but derive benefit from an examination of some of their books and precedents.

Foster's Crown Law, a book of deserved reputation, defines treason by levying war to consist in "any insurrection or rising which is intended again the person of king, be it to dethrone or imprison him, or to oblige him to alter the measures of his government." Foster further declares, that "any insurrection, to throw down all enclosures, to alter the established law or change religion," is in construction of law High Treason. This definition is broad enough to cover the offence committed at Christiana, provided the United States have proved, as they contend they have done, that the object of the parties assembled was to obstruct the execution of the law generally—that is, to nullify and render it inoperative, as far as they had it in their power. If resisting, "to alter the established law" is treason, an attempt, by force, to nullify and obstruct a law must be treason;

for surely the attempt to nullify and obstruct, is as bad as a rising to alter. Foster, 211.

In the case of Lord George Gordon, who was indicted of treason, for attempting by force to procure the repeal of an Act of Parliament, commonly known as Sir George Saville's Act, for removing certain disabilities imposed on the Catholic subjects of the realm, by a Statute of William III., Lord Mansfield declares, "that if persons do assemble themselves, and act with some force in opposition to some law which they think inconvenient, and hope thereby to get it repealed, this is a levying war and high treason." And again, he says:

"To attempt by intimidation or violence the repeal of a law; or prevent by force or terror the execution of a law, is an act of levying war." 21 State Trials, 643. Doug. 590. This decision of Lord Mansfield is directly in point, and fully sustains the doctrine contended for by the prosecution. The object of the persons assembled at Parker's house, on the morning of the 11th of September last, was "forcible opposition to an Act of Congress." The Act of Congress, commonly known as the fugitive slave law, authorized the recapture of the slaves; and made any attempt to obstruct or hinder the master or his agent in endeavoring to reclaim them, "either with or without process," a misdemeanor, punishable by fine and imprisonment. Minoths' U. S. Statutes at large, 1849–50, page 464. Sect. 7. That the object in this case, was "to prevent by force the execution of a law" of the U. States, cannot be doubted. For one hundred, to one hundred and fifty negroes, armed with guns, scythes, swords, corn cutters, clubs, &c., came together on the morning referred to, attacked the officer, killed the master who accompanied him, and wounded and dispersed the rest of his party. The violence was real, open, palpable, and attended with bloodshed. But actual violence is not necessary. Being in force and preventing by intimidation the execution of a law, is treason according to Lord Mansfield. But the force of this authority has been attempted to be shaken by the learned and able counsel, (Mr. Cuyler) who opened the case on part of the defence. He thinks, that smarting under the loss of his fine mansion, destroyed by the mob, Lord George Gordon was alleged to have led, that Lord Mansfield strained the law in order to accomplish his conviction. Lord Mansfield, prostituting his high place, wounding his conscience, and sullying forever the brightness of his immortal fame, through a pitiful sentiment of selfish venation! What a conception of the character of one of England's most renowned and upright judges! No, gentlemen; if such a circumstance as that adverted to by the learned counsel could have had any effect on such a man as Lord Mansfield, it would have been a contrary one. If the thought of an incidental personal injury had ever entered his mind, in connection with the decision of the case, it would have induced him to incline the scales of justice, if he inclined them at all, in favor of the accused. Enlightened and generous minds, distrustful of the influence of resentment or prejudice, always lean, when they lean at all, in the direction opposite to it. But Chief Justice Marshal lays down the law in the same way in the case of the United States vs. Aaron Burr.

But it is not necessary to insist on English precedent, or pursue them further; and I have adverted to them merely to show that they are in harmony with decisions in our own country. In the earlier part of our political history, and before the workings of our institutions were well understood by the people, or their inherent strength and force developed, several attempts were made to obstruct the execution of obnoxious laws by force. The laws which provoked the greatest amount of popular excitement and hostility, were the Excise laws, and the laws taxing houses, &c. Opposition to the first gave rise to the "Whiskey Insurrection;" opposition to the second, to what is called the "Northampton Insurrection." For participation in the former, Vigol, Mitchell and others, were brought to trial and convicted of treason. For heading the latter, John Fries was tried and found guilty.

In Vigol's case, Wharton's State Trials, 175. Judge Patterson declares, "that an attempt by force to suppress the office of excise, is high treason." In Mitchell's case, ib. 182, the same judge declares that "to attempt to suppress the excise offices and prevent the execution of an Act of Congress, by force and intimidation, is high treason by levying war."

Here is the very principle for which the prosecution contends. And it is the same asserted in the trial of Lord George Gordon by Lord Mansfield. The object of the negroes and their white confederates in this case, was to prevent by force the execution of the fugitive slave law; and their object was successfully accomplished by the murder of Edward Gorsuch and the putting to flight of the officer charged with the execution of the process.

Judge Iredell, a man of great learning and most amiable character, in charging the Grand Jury in the case of the Northampton insurgents, says, "if the intention of the insurgents was to prevent by force of arms the execution of any act of Congress altogether, any forcible opposition calculated to carry the intention into effect is a levying of war." Wharton's St. Trials, 480. This is the same doctrine held by Judge Patterson in the cases of Vigol and Mitchell. By some it has been supposed, that the law as laid down in these cases by Judge Patterson has been to some extent modified by Judge Iredell, by introducing into his opinion the word "altogether." But the introduction of this word, does not, in my judgment, change in the slightest degree the import of the sentence in which it is used. The word "altogether" is simply explanatory; and is intended merely to exclude the conclusion, that the attempt to prevent the execution of an act of Congress in a particular case, in reference to a particular individual, is treason. It was introduced obviously for the purpose of showing, that the intention of those attempting to prevent the execution of a law must be general, and not limited to the infraction of it in a particular instance, in order to constitute treason. Judge Patterson intended nothing more

or less than this; and the law, as he laid it down, is in perfect harmony with law as laid down by Judge Iredell, and as understood by the prosecution in this case. If the object of the prisoner and the negroes, in going to Parker's, was merely the rescue of particular slaves, and not the obstruction of the law itself, induced by a general feeling of opposition to it, we do not pretend that the act was treason. But if their opposition to the law was such, that it would have carried them elsewhere as readily as to Parker's, and to the rescue of other slaves as readily as those of Gorsuch's—if at one time as well as another, and in behalf of one slave as well as another, they would have resisted the execution of the law, the act was treason by all the authorities, English and American.

On the trial of John Fries the leader of the Northampton insurgents, Judge Peters says, "it is treason by levying war againt the United States for persons who have none but a common interest with their fellow citizens, to oppose or prevent by force, numbers or intimidation a public and general law of the United States, with intent to prevent its operation or compel its repeal. Force is necessary to complete the crime; but the quantum of force is immaterial." Wharton's St. Trials, 350.

The fugitive slave law is a general and public law of the United States; and Castner Hanway and his associates had in it but a common interest with their fellow citizens; and they prevented it. operation by force, numbers and intimidations They did more. In opposing it, they committed murder and other grievous outrages. I need hardly say to you, gentlemen of the jury, that the actors in the Christiana tragedy have brought themselves within Judge Peters' definition of treason. They have not only done so, but they have done works of supererogation, by shedding blood.

Fries having been convicted, a new trial was granted, in consequence, if I remember rightly, of some bias being discovered on the part of one of the jurors; and at the second trial, Judge Chase, one of the ablest of our American judges, presided. In his charge to the jury, he lays down, "that any insurrection or rising to resist or prevent by force or violence the execution of any statute of the United States for levying or collecting taxes, or for any other object of a general or national concern, is a levying war." The reason (he proceeds to say) is that an insurrection or rising to prevent by force the execution of any statute of the United States, has a direct tendency to dissolve all the bonds of society, to destroy all order and all laws, and also all security for the lives, liberties, and property of the citizens of the United States." Wharton's St. Trials, 634.

This is substantially, and to every intent and purpose, the law as laid down by Judges Iredell and Peters in the same case. And here, gentlemen, allow me to refer for a moment, to a portion of the argument of the learned and very able counsel, (Mr. Read) who preceded me, and on which he dwelt with great earnestness. He contended, that by the later English authorities, it is necessary, in order to constitute the offence of treason by levying war, that there must be an insurrection or rebellion. He also contended, that in order to constitute treason under the constitution and laws of the United States, there must be insurrection or rebellion; and to sustain his views in this respect he has quoted from the Madison papers, the remarks of several members of the convention, on the article of the Constitution relating to treason.

Insurrection means nothing more than rising; and the terms insurrection and rising are used indifferently by Judge Chase in this case. Rising, in the sense in which it is used by him, means the concerted assembling together of a number of individuals for a particular purpose. The assemblage at Parker's was a rising, and its object was the obstruction of the law by forcible means.

Rebellion, in its common acceptation, is waging war against legitimate authority. And I have shown by the authorities which I have produced, that the attempt by force to prevent the execution of an act of Congress, is levying war. Levying war and waging war, both mean making war. You see, therefore, gentlemen of the jury, that the English cases which declare, that to constitute treason, there must be an iusurrection or rebellion is nothing more than repeating in other terms, what we admit the law to be, and what, in this country, it has always been held to be.

In the United States *v.* Bollman and Swartout *ex parte* Chief Justice Marshall says, "if a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered traitors." 4 Cranch. 126. In this case Judge Marshall quotes Judge Chase's opinion in Fries' case, with approbation.

This case, you will see, is to the same effect as the other which I have brought to your notice. It is couched in more general terms, and states only general propositions. But it may aid you in coming to a conclusion in one respect. It shows clearly, that "all those who perform any part, however minute, or however remote from the scene of action," provided their intention be to forward the object of conspiracy, they are to be considered traitors. It is not necessary that Castner Hanway should have fired a gun or struck a blow. It was enough that he was present, consenting to what was done by others.

Judge Story, in charging the grand jury at Newport, Rhode Island, on the 15th of June, 1842, after stating what was necessary to constitute treason under certain circumstances, adds, "that it will be equally treason, if the intention is by force to prevent the execution of any one or more general and public laws of the government, or to resist the exercise of any legitimate authority of the government in its sovereign capacity. The definition of Judge Story as to what constitutes treason, given as late as 1842, is quite as broad as that of any of the judges who have preceded him. To resist the exercise of any legitimate authority of the government in its sovereign capacity, is declared to be treason. Is not the execution of process by one of its officers an

exercise of its legitimate authority? Was not the conduct at Parker's a resistance of the exercise of its legitimate authority? If it was, those who were guilty of the resistance were, according to Judge Story, guilty of treason.

In charging the grand jury of the city and county of Philadelphia, in relation to the Kensington riots, Judge King says, "that where the object of the riotous assembly is to prevent by by force or violence the execution of any statute of this Commonwealth, or by force or violence to coerce its repeal by the legitimate authority, or to deprive any class of the community of the protection afforded by law, as burning down all churches or meeting houses of a particular sect, &c.; and the rioters proceed to execute by force their predetermined objects and intents, they are guilty of high treason in levying war against the Commonwealth." Whart. Crim. Law, 586.

Here again you will see that the same doctrine is held—"that where the object of a riotous assembly is to prevent by force or violence the execution of a statute of the Commonwealth, it is high treason by levying war." Thus, in England, in the United States, and in the Commonwealth of Pennsylvania, it is held to be "levying of war" to attempt by force to prevent the execution of a statute of a public character and general concern. In all these different courts, and by judges of the greatest eminence for learning, moderation and purity of character, have the same words received the same construction. It is true, that on the other side, one of the counsel holds the opinion that it is something worse than absurd to call the act of three non-resisting quakers, and some eight and thirty penniless, miserable negroes, a levying war against the United States. Non-resistents although they were, and miserable as were their associates, it should be remembered that Edward Gorsuch came to his death at their hands, and that by them the laws of the land were violated and trampled under foot.

His Honor Judge Kane, in charging the grand jury which found the bill on which the prisoner is now being tried, has laid down the law as clearly and concisely as any of his predecessors; and this he has done in view of all the lights furnished by modern British and American jurisprudence. The law, as stated in this charge, has been received by the Bar of the country, as far as it has given expression to its opinion, with entire approbation. After adverting to certain facts, Judge Kane proceeds:—

"If the circumstances to which I have adverted have in fact taken place, thay involve the highest crime known to our laws. Treason against the United States is defined by the Constitution, Art. 3, Sec. 3, Cl. 1, to consist in "levying war against them, or in adhering to their enemies, giving them aid and comfort." This definition is borrowed from the ancient law of England, Stat. 25 Edw. 3, stat. 5, chap. 2, and its terms must be understood of course in the sense which they bore in that law, and which obtained here when the Constitution was adopted. The expression "levying war," so regarded, embraces not merely the act of formal or declared war, but any combination forcibly to prevent or oppose the execution or enforcement of a provision of the Constituion, or of a public statute, if accompanied or followed by an act of forcible opposition, in pursuance of such combination. This, in substance, has been the interpretation given to these words by the English judges, and it has been uniformly and fully recognized and adopted in the courts of the United States. (See Foster, Hale, and Hawkins, and the opinions of Iredell, Patterson, Chase, Marshall, and Washington, J. J., of the Supreme Court, and of Peters, D. J. in United States *v.* Vigol, United States *v.* Mitchell, United States *v.* Fries, United States *v.* Bollman and Swartwout, and United States *v.* Burr.)

"The definition, as you will observe, includes two particulars, both of them indispensable elements of the offence. There must have been a combination or conspiring together to oppose the law by force, and some actual force must have been exerted, or the crime of treason is not consummated.

"The highest, or at least the direct proof of the combining may be found in the declared purposes of the individual party before the actual outbreak; or it may be derived from the proceedings of meetings, in which he took part openly, or which he either prompted or made effective by his countenance or sanction,—commending, counselling and instigating forcible resistance to the law. I speak, of course, of a conspiring to resist a law, not the more limited purpose to violate it, or to prevent its application and enforcement in a particular case, or against a particular individual. The combination must be directed against the law itself.

"But such direct proof of this element of the offence is not legally necessary to establish its existence. The concert of purpose may be deduced from the concerted action itself, or it may be inferred from facts occurring at the time, or afterwards, as well as before.

"Besides this, there must be some act of violence, as the result or consequence of the combining. But here again, it is not necessary to prove that the individual accused was a direct, personal actor in the violence. If he was present, directing, aiding, abetting, counselling, or countenancing it, he is in law guilty of the forcible act. Nor is even his personal presence indispensable. Though he be absent at the time of its actual perpetration, yet if he directed the act, devised or knowingly furnished the means for carrying it into effect, instigated others to perform it, he shares their guilt. In treason there are no accessories.

"There has been, I fear, an erroneous impression on this subject among a portion of our people. If it has been thought safe to counsel and instigate others to acts of forcible oppugnation to the provisions of a statute,—to inflame the minds of the ignorant by appeals to passions, and denunciations of the law as oppressive, unjust, revolting to the conscience, and not binding on the actions of men,—to represent the constitution of the land as a compact of iniquity, which it were meritorious to violate or subvert,—the mistake has been a grievous one; and they who have fallen into it may rejoice, if peradventure

their appeals and their counsels have been hitherto without effect. The supremacy of the constitution, in all its provisions, is at the very basis of our existence as a nation. He, whose conscience, or whose theories of political or individual right forbid him to support and maintain it in its fullest integrity, may relieve himself from the duties of citizenship by divesting himself of its rights. But while he remains within our borders, he is to remember, that successfully to instigate treason is to commit it."

Bearing in mind the doctrines of this charge, I do not think gentlemen, you can find much difficulty in classing this offence. You will see it distinctly lays down, that the term "levying war," embraces not only the act of formal or declared war, but likewise any combination forcibly to prevent the execution of a provision of the Constitution, or of a public statute, provided such combination be accompanied or followed by an act of forcible resistance. That the definition here given, embraces just such an outrage as that committed at Parker's house on the morning of the 11th September, no one it seems to me can doubt. The object of that outrage was to prevent the execution of the law, providing for the rendition of fugitive slaves; and it was not only a forcible and violent, but it was likewise a cruel, wicked, and bloody one.

The case of the United States vs. Hoxie, has been relied on by the defence, as asserting a doctrine, different from that of the cases to which I have called your attention; and it is insisted that the doctrine of this case is the true one. I shall not attempt to controvert the doctrine of the court in the case of Hoxie. In my judgment, if rightly understood, it is in nowise in conflict with the doctrine of the other cases which have been brought to the attention of the court and jury. This was a case arising under the Embargo Law. A raft of timber about to be smuggled into Canada, was seized by a Collector of Customs, and stopped on its passage. After words, anticipating an attempt to retake it, on the part of those to whom it belonged, it was placed by the Collector in the custody of a company of militia, called out for the purpose. The owners and a number of persons, (about sixty) assembled, got possession of it, and carried it to Canada. As they were removing it, they were fired on by the militia, and being armed, they returned the fire; but no one on either side was hurt. Now, it has been conceded by the prosecution, from the outset, that unless their intention in committing the act, be to obstruct and nullify the law itself, the act is not treasonable. This, as I have stated, was an attempt to smuggle; an attempt to evade, and not to resist. I need not tell you that the term smuggling, both in this country and in England, is a term used to express the act of evading the revenue laws. Evading a law is not resisting it. Nor does any act of evasion, no matter with what force it may be attended, amount to treason. In England, nothing scarcely is more common than conflicts, and sometimes bloody ones, between the smugglers and the troops. But nobody has ever heard of a smuggler being indicted for treason. On the part of the smuggler very often, there is no hostility to the law. There is no desire on their part to have it repealed; for if repealed, their vocation would be gone. Nor does their conduct ever evince any general purpose of obstructing the revenue laws. Their object, I repeat, is to evade, and not overthrow the laws. Now, gentlemen, permit me to ask what analogy there is between this case and ours? The purpose in Hoxie's case was to evade the laws; and though they ended by resisting the troops, evasion and not resistance was their object. In Hanway's case, the law in process of execution, was violently obstructed, the officer intimidated, and one of his party killed on the spot, and others wounded. The object, if the evidence, as we interpret it, is to be believed, was not the rescue of particular negroes, through special regard for them. It was hostility to the law, not affection or regard for the negroes; for with them the conspirators do not appear to have been unacquainted. In short, in this case, the object of the prisoner and his accomplices, was to prevent the execution of the laws; not through hostility to those who were seeking its aid; not through affection for those against whom its aid was invoked; but because they were opposed to the law itself, and determined to prevent its execution.

I have now done with the examination of the law as it relates to this case. It is your business to apply it; and I am sure you will do it conscientiously and fearlessly, looking to no consequences, except in so far as you will be thereby inspired to a firm and manly discharge of your duty. A thousand extraneous things have been introduced into the discussion on the part of the defence. An attempt, persevered in from the very beginning of the trial, has been made to excite your prejudices againt the prosecution. In an honest search for truth, the effort always is to strip the subject of inquiry of every thing extraneous and adventitious, and to present it naked to the inquiring tribunal. It is only falsehood that needs a cloak. Truth having no deformity to conceal may be exhibited naked. Why is it then, that our learned friends have labored to surround this inquiry with so much that is calculated to obscure and mislead? Why is it that the learned gentleman who preceded me (Mr. Read) arrayed before you all the evils which flow from slavery? Why introduce the local laws of the slaveholding states? Why tell you that marriage, the holiest relation of society, is prohibited to the negro; why that the Bible, which contains the precepts which teach us how to live and prepare us to die, is forever closed against him; why that it is a penal offence to teach him to read or write; why that in South Carolina a man may kill his slave on the payment of a sum of money; why, in short, denounce and insist here that slavery is an unmitigated curse, without a redeeming feature? Why all this, and ten times more that has been the subject of exciting criticism? I will not so wrong the intelligence of the gentlemen who conduct the defence, as to suppose that all this extraneous matter was introduced without aim or purpose. But with what object has it been intro

duced? It relates to no part of the issue that is trying; it illustrates no fact in the cause. For what purpose then I ask again has it been introduced? Was it to justify the conduct of the conspirators? This it cannot do. The wrongs of slavery and the sins of slaveholders cannot authorize or justify Castner Hanway in committing treason. But, gentlemen, though it relates to no part of the issue, though it constitutes no justification of the conduct of Castner Hanway, it may nevertheless serve the double purpose of enlisting your prejudices against the prosecution, and withdrawing your attention from the many material though less exciting facts in the case. If in the multitude of subjects gathered together and cast in confusing method upon the facts of the case, so that some of them may be obscured or forgotten, it will be a point gained on part of the defence. But should they fail in this, they may still serve to arouse prejudices without your being aware of it, which may profit the prisoner. But the cause which needs to be sustained is mystification and the enlistment of prejudices cannot be a just, nor even a very hopeful one; and that this is not a hopeful one, at least, is proved by the extraordinary efforts made to confuse and prejudice your minds.

When you saw the counsel for the prisoner, who closed the case in his behalf, ranging through the wide fields of history, poetry and fiction, but always managing to begin or end with something about Maryland, and the part which she is taking here in relation to the prisoner, or which she is acting at home in regard to the institution of slavery, you no doubt wondered, what all this could have to do with the offence of Castner Hanway for which he is on his trial. But, gentlemen, it was for no idle purpose, that Maryland has been made to occupy from first to last so invidious an attitude; that Charles I. Cromwell, and Jack Cade have all been made to play their parts in the trial. It was for the twofold purpose I have already stated—to exasperate and call away your attention from the main matter of inquiry.

To defend slavery in the abstract is not one of our duties. It is to maintain the law as it exists that we are here; to show that the prisoner has violated it, and incurred its penalties. But, gentlemen, I would be doing injustice to my own feelings, if I did not vindicate Maryland against the aspersions cast upon her conduct as exhibited in her legislation in reference to her negro population. It is not true, as it has been charged, that her free colored population are without the full protection of the laws. To kill a negro is as much murder as to kill a white man; even to chastise him immoderately without cause is prohibited by law and punishable by it. To kidnap either a free negro, or one who is a slave but for a term of years, is an offence punishable by imprisonment in the penitentiary. And a man who acts with cruelty to his slaves, or who fails to provide them with sufficient food and clothing, is placed under the ban of society and punished by its contempt as well as by the laws. But, I repeat that, neither my colleagues nor myself, are the defenders of slavery; though we are not, we cannot permit without indignant denial and rebuke, sweeping charges of injustice and cruelty to be made against the citizens of our sister states. At whose doors the original sin of slavery lies; whether slaves were first landed from northern ships upon southern shores; or whether Massachusetts and South Carolina stood together in the convention, protesting against the abolition of the slave trade, because one might find in it profitable employment for its shipping, and the other valuable cultivators of its soil, it would be bootless to discuss. It is enough for you and I to know that we are not responsible for its existence or its evils; and that whether it be right or wrong we are performing our duty in maintaining inviolate the compact of our fathers which has descended to us with all its obligations and all its blessings.

In this connection, gentlemen, I cannot forbear calling your attention to a portion of the Rev. Mr. Wadsworth's sermon, preached in this city on Thanksgiving day; and it is as follows: "For passing by all other causes of irritation as just now secondary and subordinate, look, for a moment, at the influence which the Gospel of Christ would have in this great sectional controversy about slavery.

First, it would say to the Northern fanatic, who vapors about man-stealing, as if there were no other evil under the sun but this one evil of slavery—it would say to him, emulate the spirit of your blessed Master and his apostles, who, against this very evil in their own times brought no railing accusation; but in one instance, at least, sent back a fugitive from the household of Philemon. It would say, look well to your own neighborhood, and household, and hearts, and see whether even greater evils do not exist there, making yourselves pure ere ye denounce your neighbor—working with the beam in your own eye, ere with the mote in your brother's eye. It would say to each, to every good man seeking practically the dismemberment of this great national confederacy, out of a pretended regard to the personal and religious rights of Southern bondmen, 'ye know not what manner of spirit ye are of.'

In treating Southern Christian slave holders with Christian courtesy, and sending back their fugitives when apprehended among you, you neither endorse the system nor partake of its evil; you are only performing in good faith the agreement, and redeeming the pledges of your forefathers, and leaving to each man for himself to answer for his own acts at the judgment seat of Jesus. It would tear away from the man, as the foulest cloak of hypocrisy, that pretence of a religious principle in this whole matter of political abolitionism.

Religious principle! Oh my God! That religious principle, that for the sake of an abstract right, whose very exercise were disastrous to the unprepared bondmen who inherit it, would tear this blest confederacy in pieces, and deluge these smiling plains in fraternal blood, and barter the loftiest freedom that the world ever saw, for the armed despotism of a great civil warfare! That religious principle which, in disaster to man's last great experiment, would

fling the whole race back into the gloom of an older barbarism—rearing out of the ruin of these free homes, the thrones of a more adamantine despotism—freedom's beacons all extinguished, and the whole race slaves. That religious principle through which, losing sight of God's great purpose of evangelizing the nations, would shatter the mightiest wheel in the mechanism of salvation, and palsy the wing of God's preaching angel in its flight through the skies.

Alas—alas! Ye that count as little this bond of blessed brotherhood, wrought by our father's mighty hands and bleeding hearts—we tell you sorrowing and in tears, that your pretence is foul hypocrisy. Ye have reversed the first precept of the gospel, for your wisdom is a dove's, and your harmlessness a serpent's. Ye have not the first principle within you either of religion or philanthropy, or common human benevolence. Your principle is the principle of Judas Iscariot, and with the doom of the traitor ye shall go to your own place.

No, sir—no sir. There is no gospel in all this treasonable fanaticism—for treason to my country is rebellion to my God.

But then, secondly. To the Southern slave master would the gospel come solemnly. It would tell him that his bondman was yet altogether a man, made in God's own image and redeemed by his blood. It would warn it from aught but Christian kindness unto a living soul, thus bought with a price, and winged with immortality. If it sent back the fugitive to his hands again, it would, as Paul the fugitive to Philemon, to be treated as a redeemed spirit, as a brother beloved. Over all the toil of those dark-hearted children of affliction, it would pour the sweet influences of true Christian kindness. And instead of galling chains and fetters of iron, the Christian servant would be bound to his Christian master by the stronger chains of affection and the mightier bondage of love.

Ah, my brethren, let this blessed gospel have free course in the midst of us, and there would be no burning wrongs at the South to kindle Christian indignation; and there would be no standing place at the North for a malignant fanaticism. New England's practicality and Carolinian chivalry would blend again into beautiful amalgam.

The fretted chord of our great national brotherhood would grow strong again over the shorn Samson, and wedded tenderly and forever by these bending heavens and these encircling seas, God's glorious stars would blaze out on our bridals—no man thinking to put asunder what Jehovah had joined."

This gentlemen, is the true gospel, the gospel of charity and goodwill to all. Living by such precepts, harmony and peace would prevail, and heart-burnings and dissentions cease. But counsels of moderation and forbearance, are, in the present state of feeling, too often denounced as the result of subservience to interest; and we shall probably hear these admonitions to toleration and charity, scouted as having their origin and object in the propitiation of the cotton influence, which is alleged to rule the community.

Now, gentlemen, I am nearly done; I have addressed you at greater length than was necessary, and I fear than has been agreeable, remembering the length of time you have been confined. My able colleagues, Messrs. Brent and Ludlow, having passed over the whole ground before me, and having presented to you both the law and the facts, in a clear and perspicuous manner, it may have been unnecessary for me to occupy so much of your time. But having once embarked in the discussion, it became necessary with a view to clearness and perspicuity, that I should re-occupy the whole field of evidence and law. I have done so, and I fear at tiresome length; but let the importance of the case, and the necessity which I felt of replying to the arguments, pressed upon you with so much zeal, earnestness and force, by the learned and eloquent counsel, (Messrs. Lewis and Read,) who have argued the case on the part of the prisoner, be my apology. I feel that the case is an important one—important to the prisoner, important to the States of the Union, and the people of the Union. In the argument which I have submitted to you, I have endeavored to treat the facts, and treat the case with fairness, candor and sincerity; and while I have labored to perform my duty faithfully to the government, I have desired to do no injustice to the prisoner. The State of Maryland has been charged with thirsting for his blood; and to excite your indignation, an effort has been made to induce you to believe that its counsel are not only its willing instruments, but the prompters of its vindictiveness. This insinuation I have repelled as a libel; as a libel alike on my colleague, myself, and the State which we represent.

Gentlemen of the jury, I dislike to speak of myself. It is always painful to do so. But I am happy in being able to appeal to a number of you, who have known me from the first day I set my foot on the soil of Pennsylvania, until the present, for my vindication against this base insinuation. I have been much in public life, and like other public men have been the subject of many charges, some of them true, some of them false, but none imputing to me malignity, cruelty, or a thirst for blood. I have no enmity against Castner Hanway. I never saw him till he was arraigned; and my only feeling in regard to him, is a feeling of compassion. God forbid! that being innocent, a hair of his head should fall to the ground! To be instrumental in convicting an innocent man would be to plant thorns in my own pillow, "to murder my own sleep"—to inflict a wound on my own peace that would be incurable forevermore! If he be innocent, send him in the name of God that "good deliverance," which the clerk invoked in his behalf when he put himself for trial on God, and his country.

Gentlemen, I am now done. My duties in connection with this cause are ended; but the most important part of yours has yet to be performed. The fate of Castner Hanway is in your hands. If he be innocent, acquit him. If he

be guilty, painful as may be the duty, you must convict him; and in order that you may do justice, forget every thing in the cause but the evidence and the law; and remember only your responsibility and your duty. Do this, gentlemen, as I am sure you will, and neither society, whose guardians you are, nor the prisoner whose judges you are, nor your consciences, which are your own judges, will ever reproach or condemn you. And justice having been done, let us anticipate that sectional animosity and discord will disappear, and that the mutual heart-burnings and distrust which have prevailed in the country will cease. Let us hope so, at least; and let us hope, too, that the clouds which we have seen lowering over the horizon of the Union and threatening its peace, were but the shadow of the wings of the guardian angel of the republic, and that when they have been folded, the rays of the sun of peace will again shine forth upon the land to bless it.

Gentlemen, remember that humanity throughout the world, that freedom wherever it has a home or hopes to find one, is interested in every thing, how remotely soever it may affect the stability, or endanger the peace of the American Union. The eyes of the world are upon the constellation, in its banner. Its stars are the beacons of liberty. Let us then, for our sakes, and for the sake of liberty in other lands, guard it as the Ark of the Covenant was guarded of old. Let no hand deface it. Let the day never come when it shall be rent in twain; when one cluster of its stars, separated from the other and beaming in different banners, shall be borne over adverse and conflicting hosts; but let it remain as it now is, "the Flag of the Union," still waving over the heads of united freemen, obedient to the same laws—laws supported by all, sustained by all, vindicated by all, in every section of the country.

CHARGE OF THE COURT.

By Judge Grier.

Gentlemen of the Jury:

We must commend the patient attention which you have thus far given to this most important and interesting case. It has taken up much of your time and caused you some personal inconvenience, but not more perhaps than the importance of the issue, both as respects the interests of the public and your duty to the prisoner whom you have in charge, has necessarily required.

It has been the anxious desire of the Court, notwithstanding the pressure of other duties, to give ample time and opportunity for the careful and full investigation of the facts and law, bearing on the case—not only because it is the first of a numerous list of cases of the same description which involve the issue of life and death to the parties immediately concerned, but because we know that the public eye is fixed upon us, and demands at our hands the unprejudiced and impartial performance of the solemn duties which we have been called to execute.

The prisoner at the bar has a right to require of you that you should not permit the atrocity of the transaction, or your horror of the offence with which he is charged, or your proper desire to vindicate the insulted laws of the country, to cause you to forget your duties to him, and convict him without full and satisfactory proof of his guilt.

The government also, while it cannot desire the sacrifice of an innocent individual for the purpose of public example, has a right to demand of you a firm, a fearless, and unflinching performance of your duty, and that the verdict you shall render shall be a *true* verdict according to the evidence which you have heard, and the law as explained to you by the Court.

Before proceeding to notice more particularly the questions of law or fact arising in this case, or the defendant's complicity in the transaction, suffer me to advert to some matters, which though only historically known to us, yet having passed before our eyes as citizens of the Commonwealth, may have a tendency to create in our minds some bias on this subject, but which should not be permitted to affect your verdict, whatever your private sentiments and feelings may happen to be.

Without intimating any opinion as to the guilt or innocence of the prisoner at the bar, it must be admitted that the testimony in this case has clearly established, that a most horrible outrage upon the laws of the country has been committed.

A citizen of a neighboring State, while in the exercise of his undoubted rights, guaranteed to him by the Constitution and laws of the United States, has been foully murdered by an armed mob of negroes. Others have been shot down, beaten, wounded, and have, with difficulty, escaped with their lives. An officer of the law, in the execution of his duty, has been openly repelled by force and arms.

All this has been done in open day—in the face of a portion of the citizens of this Commonwealth, whose bounden duty it was as good citizens to support the execution of the laws—without any opposition on their part—without any attempt at interference to preserve the peace; and who, if they did not directly encourage or participate in the outrage, looked carelessly and coldly on. These, I say, are facts established in this case beyond contradiction.

That it is the duty, either of the State of Pennsylvania or of the United States, or of both, to bring to condign punishment those who have committed this flagrant outrage on the peace and dignity of both, cannot be doubted.

It is now more than sixty years since the adoption of the Constitution of the United States. Under its benign influence we have become a great and powerful nation; happy and prosperous at home, feared and respected abroad. And why has this confederacy obtained such an immeasurable superiority over the other republics on this continent? It is because, *here*, all bow to the supremacy of the law—because, *here*, we have a moral, virtuous and a religious people, and a firm, fearless and impartial administration of the

laws—because, *here*, the minority uphold the constitution and laws imposed by the majority—because we have not *here* pronunciamentos, rebellions and civil wars, caused by the lust of power, by ignorance, faction or fanaticism, which in other countries have marred every attempt at free government.

That the people of the great State of Pennsylvania have a loyalty, fidelity, and love to this Union and the Constitution and laws which have so exalted us as a nation, cannot be doubted; and yet I grieve to admit, that the only trials and convictions on record for armed and treasonable resistance to the laws of the United States since the adoption of the Constitution have their venue laid in Pennsylvania

But these were more than fifty years ago, and before we had become accustomed to the working of a new and untried experiment in self-government, or anticipated its glorious results. It is not our purpose to excuse or vindicate these early outbreaks of popular insubordination, which were soon suppressed by military force and the impartial execution of the laws by courts and juries

But without, at present, expressing any opinion whether the present outrage is to be classed under the legal category of riot, murder or treason, we think it due to the reputation of the people of this Commonwealth, to say, that (with the exception of a few individuals of perverted intellect, some small districts or neighborhoods whose moral atmosphere has been tainted and poisoned, by male and female vagrant lecturers and conventions,) no party in politics, no sect of religion, or any respectable numbers or character can be found within our borders who have viewed with approbation or looked with any other than feelings of abhorrence upon this disgraceful tragedy.

It is not in this Hall of Independence, that meetings of infuriated fanatics and unprincipled demagogues have been held to counsel a bloody resistance to the laws of the land. It is not in *this* city that conventions are held denouncing the Constitution, the laws, and the Bible. It is not *here* that the pulpit has been desecrated by seditious exhortations, teaching that theft is meritorious, murder excusable, and treason a virtue.

The guilt of this foul murder rests not alone on the deluded individuals who were its immediate perpetrators, but the blood taints with even deeper dye the skirts of those who promulgated doctrines subversive of all morality and all government.

This murderous tragedy is but the necessary development of principles and the natural fruit from seed sown by others whom the arm of the law cannot reach.

In making these remarks, we prefer to speak the truth in plain language, without seeking for bland euphuisms or flattering terms of respect for the promulgators of principles which we verily believe are not only dangerous to the peace, prosperity and happiness of the citizens of these United States, and leading to the dissolution of the Union, but subversive of all human government.

I have adverted to these matters which must have forced themselves on your minds and attention before the commencement of this trial, in order to warn you against suffering them to bias your minds in this case. This defendant must stand or fall by the *evidence* in the cause, and not be made the scape-goat or sacrifice for the offences of others, unless he be proved to have participated in them. But if that shall have been made to appear by the evidence, it will be no excuse or defence for him, that others are equally guilty with himself. It is due to him, however, to say that there is no evidence before us that the prisoner attended any of these conventions got up to fulminate curses against the Constitution and laws of the country, to libel its best citizens, and to exhort to a seditious and bloody resistance to the execution of its laws.

You will have observed that the bill of indictment charges the defendant with treason in resisting the execution of a certain law of Congress concerning fugitives from labor, which has been the object of much controversy and agitation, and on which it may be proper to make a few remarks before we proceed to the more immediate merits of the case.

The learned counsel for the prisoner, having a due regard for the high character which they sustain in their profession, have not made the objection to this law which has been so clamorously urged by many presses and agitators, that it is unconstitutional. It is true, some ecclesiastical assemblies in the north, treating it, we presume, as a question of theology or orthodoxy, have ventured to anticipate the decision of the legal tribunals on this subject. But as highly as we respect their opinions on all questions properly within their cognizance, we cannot receive their decisions as binding precedents on questions arising under the Constitution.

The Constitution enacts that "no person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due." This is the supreme law of the land, binding not only the respective States as such, but on the conscience and conduct of every individual citizen of the United States. It is well known that, without this clause, the assent of the Southern States could never have been obtained to this compact of Union. And if, contrary to good faith, it should be practically nullified—if individual or State legislatures in the North can succeed in thwarting and obstructing the execution of this article of our confederation and the rights guaranteed to the South thereby, they have no right to complain if the people of the South should treat the Constitution as virtually annulled by the consent of the North, and seek secession from any alliance with open and avowed covenant breakers.

Every compact must have mutuality; it must bind in all its parts and all its parties, or it binds none. Those States in the North whose legislation has made it a penal offence for their judicial and executive officers to lend their assistance in the execution of this clause of the Constitution, and compels them to disregard their solemn oath

to support it, have proceeded as far, and perhaps farther, in the path of nullification and secession than any Southern State has yet done. I know it is attempted to justify such legislation by casting the blame on the Supreme Court of the United States, and quoting certain dicta of some of the judges in the case of the Commonwealth *v.* Prigg. The question before the Court in that case, and the only question which could be decided, was *this*, and *this only*,—

"That the master of a fugitive having a right under the Constitution to arrest his slave without writ, and take him away; any State legislation which interfered with, or obstructed that right, and (as in the case before the Court) punished the master, or his agent, as a kidnapper, was void." How such a decision can justify such legislation it is not easy to perceive.

The Act of Congress of 1793, which was first made to enforce this clause of the Constitution, was found to be defective and inoperative; and chiefly because it provided no legal process or public officer to make the arrest of the fugitive and bring him before the magistrate.

The forcible arrest and seizure of a man without any writ or semblance of legal authority, justly became odious, because it was liable to very great abuse. There was nothing to distinguish the arrest of a master from the seizure of the vile kidnapper and man stealer. The Act of 1850 remedies this evil; it gives the master legal process and an officer of the law to make the arrest, and moreover gives the party arrested the benefit of a hearing and the decision of a judicial officer, before he can be deported. The free colored man who was before liable to capture by kidnappers, is better protected by this law than he was before.

In this feature alone is there any characteristic difference between this Act and the Act of 1793, to which it is a supplement—no objection had ever been urged to that Act, that it was unconstitutional, because it did not give the alleged fugitive a jury trial. In no cases of extradition either of fugitives from justice or from labor, where the only question to be decided is the identity of the person whose reclamation is sought, had it ever been heard that the country or State *to* which he fled, was to try the question of his guilt or innocence, or pass upon his rights and duties in the State *from* which he fled. And yet this newly discovered argument is the only one which has ever been urged, with any pretence even of plausibility, by those who make so great clamor against this Act.

The truth is, the shout of disapprobation with which this Act has been received by some, has been caused, not because it is injurious or dangerous to the rights of freemen of color in the United States, or is unconstitutional; but because it is an Act which *can be executed*, and the constitutional rights of the master in some measure preserved. The real objection with these persons is to the Constitution itself, which is supposed to be void in this particular from the effect of some "higher law," whose potential influence can equally annul all human and all divine law.

It is true that the number of persons whose consciences affect to be governed by such a law, is very small. But there is a much larger number who take up opinions on trust or by contagion, and have concluded this must be a very pernicious and unjust enactment, for no other reason, than because the others shout their disapprobation with such violence and vituperation. And possibly, some might be found who affect to join in the chorus with some slight hopes that they may be able to ride into place and power on the waves created by continual agitation.

It may not be said of this law, or perhaps of any other, that it is perfect, or the best that could possibly be enacted; or that it is incapable of amendment. But this may truly be said, that while there are so many discordant opinions on the subject, it is not possible that a better compromise will be made; and, most probably, none of us will live to see an Act on this subject made to please every one.

Let it suffice for the present to say to you, gentlemen of the jury, that this law is constitutional; that the question of its constitutionality is to be settled by the courts, and not by conventions either of laymen or ecclesiastics; that we are as much bound to support this law as any other; and that public armed opposition to the execution of this law is as much treason as it would be against any other Act of Congress to be found in our statute book.

Let us now proceed to examine more particularly the specific charges laid in this bill of indictment, the evidence given to support them, and the questions of law involved in the case.

The bill of indictment charges that the prisoner Castner Hanway, wickedly intending and devising the peace and tranquillity of the United States to disturb and prevent the execution of the laws thereof, to wit, "An Act respecting fugitives from justice and persons escaping from the service of their masters," approved February 12th, 1793, and another Act, supplementary to the same, passed on the 18th of September, 1850, did on the 11th of September, 1851, wickedly and traitorously intend to levy war against the United States.

It then sets forth five several overt acts,—

1st. That with a large number of persons armed and arrayed with warlike weapons, with purpose to oppose and prevent, by means of intimidation and violence, the execution of the said laws, he did wickedly and traitorously levy war against the United States.

2d. That in pursuance of said purpose, the prisoner and others so armed and traitorously assembled to prevent the execution of said laws, did with force and arms traitorously resist one Henry H. Kline, an officer of the United States, duly appointed, from executing lawful process, and wickedly and traitorously did prevent by force and intimidation, the execution of the said laws.

3d. The third is the same as the second, with this addition, that they assaulted Kline, and liberated from his custody persons arrested by him, who owed service and labor to Edward Gorsuch under the laws of Maryland, thereby traitorously preventing the execution of said laws.

4th. That the prisoner, with the others, did

traitorously meet, conspire, and consult to oppose, resist and prevent by force the execution of said laws.

5th. That in pursuance of said traitorous intention, he prepared divers books, letters, resolutions, addresses, &c., which he caused to be dispersed, containing incitements and encouragements to fugitives and others to resist, oppose and prevent by violence and intimidation the execution of said laws.

Whether the allegations of this bill of indictment are supported by evidence, is the matter which you are sworn to try.

In assisting you to arrive at a correct conclusion on these points, it is not the intention of the Court to intimate an opinion on any disputed fact. These are to be decided by the jury on their own responsibility and the oath they have respectively taken to give a true verdict.

But there are certain facts in the case which have not been disputed by the learned counsel, and which, in speaking of this case, we may assume to have been satisfactorily proved, as they have not been denied. They are these:—

That Edward Gorsuch, a citizen of Maryland, was the owner of certain slaves, or persons held to labor by the laws of that State. That these slaves had escaped and fled into Pennsylvania, and were known to be lurking in the neighborhood of the village of Christiana, in Sadsbury township, Lancaster county. That Edward Gorsuch came to Philadelphia in September last, and obtained warrants, for the arrest of these fugitives, from E. D. Ingraham, Esq., a Commissioner of this Court, having authority by law to issue such warrants. That these warrants were put into the hands of Henry H. Kline, an officer duly authorized to execute them

That on the morning of the 11th of September, about daylight, the officer, Henry H. Kline, accompanied by Edward Gorsuch, his son Dickenson Gorsuch, and his nephew Dr. Thomas Pierce, his cousin J. M. Gorsuch, and Nicholas Hutchins and Nathan Nelson, citizens of Maryland, proceeded to the house of one Parker.

That a person who was recognized as one of the fugitives for whom the warrants had been issued, was seen to come out of the house.

That the fugitive on seeing the officer and his company, immediately fled into the house and up stairs, leaving the door open behind him. That Mr. Gorsuch pursued him, followed by the officer.

That a number of negroes were collected up stairs, armed in various ways and determined to resist the capture of the fugitives. That a gun was fired by one of them at Mr. Gorsuch, and others of his assistants were struck with missiles thrown from the upper windows. That a pistol was then fired by the officer, not aimed at the negroes, but rather to frighten them and let them know their assailants were armed.

That a parley was then held between the parties, and the negroes informed that the officer had legal process in his hands for their arrest. That the negroes demanded time for the purpose, as was supposed, of offering terms of surrender, but in reality, perhaps, to gain time for the arrival of assistance from the neighborhood. That after some lapse of time, the defendant arrived on the ground, and at the same time, or soon after, large numbers of negroes began to collect around with various weapons of offence, such as guns, clubs, scythes, and corn-cutters.

That on the arrival of these reinforcements, the persons in the house set up a yell of defiance. That the officer made known his character, and exhibited his writs to the defendant, and another white man who had arrived on the ground, and demanded their assistance in executing the warrants, which was refused. That the officer deeming the attempt to execute his writs in the face of a numerous armed and angry mob of negroes hopeless, made no further attempt to do so, being content to escape with his life.

That the mob of armed negroes, now amounting to near or over one hundred persons, immediately made an attack upon the party who attended the officer. Edward Gorsuch was then shot down, beaten with clubs, and murdered on the spot. His son, who came to his assistance, was shot and wounded, and with difficulty escaped with his life.

Dr. Pierce, the nephew, was surrounded and beaten, but escaped with his life.

It is in evidence, also, and not disputed, that on the preceding evening, notice had been given in the neighborhood, by a negro who had followed the officer from Philadelphia, that an arrest of the fugitives was intended, and that the concourse and riot of the morning, was evidently by preconcert and in consequence of such information.

Without at present further noticing the history of the transaction, or expressing any opinion of the conduct of the white people in the neighborhood, on the occasion, or of the miserable farce of the jury of inquest, got up as an afterpiece to this disgraceful tragedy, we may say that the evidence has clearly shown that the participants in this transaction are guilty of riot and murder at least—whether the crime amounts to treason or not will be presently considered.

Two questions present themselves for your inquiry—

1st. Was the defendant, Castner Hanway, a participant in the offences proved to have been committed? Did he aid, abet or assist the negroes in this transaction, without regard to the grade or description of the offence committed?

2d. And secondly, if he did, was the offence treason against the United States, as alleged in this bill of indictment.

The first of these questions is one wholly of fact, and for your decision alone. The last is a mixed question of law and fact. On the law, you have a right to look to the Court, for a correct definition of what constitutes treason, but whether the defendant has committed an offence which comes within that category, is, of course, a matter of fact for your decision.

When a murder is committed, all who are present, aiding, abetting and assailing, are

equally guilty with him who gave the fatal stroke.

An abettor of a murder in order to be held liable as a principal in the felony, must be present at the transaction; if he is absent, he may be an accessory. But in treason all are principals, and a man may be guilty of aiding and abetting, though not present.

"If one man watch while another breaks into a house at night and robs it, both are guilty of burglary."

"If A comes and kills a man and B runs with an intent to assist him, if there should be occasion, though in fact he doth nothing, yet he is a principal, being present as well as A."

"If divers persons come with one assent to do mischief, as to kill, rob or beat, and one doeth it, they are all principals in the felony."

"If many be present, and one only gives the stroke, whereof the party dies, they are all principals."

"Thus if two fight a duel, and one of them is killed, the seconds who are present, are both guilty of murder."

"If A and B be fighting, and C, a man of full age comes by chance, and is a looker-on only, and assists neither, he is not guilty of murder or manslaughter, but it is a misprision for which he shall be fined, unless he uses means to apprehend the felon."

Lastly, "if divers persons come in one company, to do any unlawful thing, as to kill, rob, or beat a man, or to commit a riot, or to do any other trespass, and one of them in doing thereof kill a man, this shall be adjudged murder in them all that are present of that party, abetting him and consenting to the act, or ready to aid him, although they did but look on."

I have given you these examples from the books, in order that you may form some idea as to the nature of what the law treats as criminal, aiding, abetting and countenancing, the perpetration of an offence.

In the present case, the defendant, Castner Hanway, was present as proved by several witnesses and not denied. But did he come to aid, abet, countenance or encourage the rioters? If so, he was guilty of every act committed by any individual engaged in the riot—whether it amount to felony or treason.

There is no evidence of any previous connection of the prisoner with this party, before the time the offence was committed—that he had counselled, advised or exhorted the negroes to come together with arms and resist the officer of the law or murder his assistants.

There is no evidence, even, that the prisoner was a member of any of these associations or conventions, which occasionally or annually infest the neighboring village of West Chester, for the purpose of railing at and reviling the Constitution and laws of the land, and denouncing those who execute them as no better than a Scroggs and a Jeffries—who stimulate and exhort poor negroes to the perpetration of offences, which they know must bring them to the penitentiary or the gallows.

The fact of his interference, whether active or passive, of his aiding, counselling or abetting the perpetrators of this offence, has been argued from his language and conduct during its perpetration in his presence.

His acts, his declarations and his conduct, are fair subjects for your careful examination, in order to judge of his intentions or his guilty complicity with those whose hands perpetrated the offence. If, as the counsel for the United States have argued, he countenanced or encouraged, aided or abetted the offenders in the commission of the offence, he is equally guilty with them.

If, on the contrary, as is argued by his counsel, he came there without any knowledge of what was about to take place, and took no part by encouraging, countenancing, or aiding the perpetrators of the offence—if he merely stood neutral through fear of bodily harm, or because he was conscientiously scrupulous about assisting to arrest a fugitive from labor, and therefore merely refused to interfere, while he did not aid or encourage the offenders, he may not have acted the part of a good citizen; he may be liable to punishment for such neutrality by fine and imprisonment, but he cannot be said to be liable as a principal in the riot, murder and treason, committed by the others—and much more so if, as has been argued, his only interference was to preserve the lives of the officer and his attendants.

A man may have such conscientious principles on the subject of non-resistance, as to stand by with indifference and neutrality, when his father or friend is attacked by a bear or a madman, and in case of his death may not be liable as an aider or abettor in the murder or manslaughter. We may wonder at his philosophic indifference, though we cannot admire the man.

So a man who is a mere spectator in a contest where a mob of rioters are resisting an officer of the law in the execution of his duty, may refuse assistance, countenance or aid to either side. In so doing, he is not acting the part of an honest, loyal citizen; he may be liable to be punished for a misdemeanor for his refusal to interfere, but such conduct will not necessarily make him liable as a principal in the riot or murder committed.

But such conduct is a fair subject for the consideration of a jury in connection with other circumstances to show preconcert and guilty complicity with the rioters, murderers or traitors.

What inference the jury may draw from the evidence in this case of the conduct of this prisoner, is for them to say, after carefully weighing the arguments which have been so ably urged by the learned counsel.

With these remarks we submit this point of the case to the jury, after reading to them, *if they desire it*, the testimony of the witnesses bearing more directly on this question.

If you should find that the defendant Castner Hanway did *not* aid, assist or abet in the perpetration of the offence, you will return a verdict of not guilty without regard to the grade of the offence, whether riot, murder, or treason.

But if you should find that he has so aided and abetted so as thereby to become a principal in the transaction according to the rules of law which we have just stated, you will next have to inquire whether the offence as proved amounts to the crime of "Treason against the United States."

The bill charges the defendant with "wickedly and traitorously intending to *levy war* against the United States;" and the jury must find the act or acts to have been committed with such intention. For although the prisoner may have been guilty of riot, robbery, murder, or any other felony, he cannot be found guilty under this bill of indictment unless you find that he *intended to levy war against the United States*, or that the acts were committed by himself and others in pursuance of some conspiracy or preconcert for that purpose; and this is a question of fact for the decision of the jury.

But in the decision of it, the jury should regard the construction of the Constitution as given them by the Court as to what is the true meaning of the words "*levying war.*"

Treason against the United States is defined by the Constitution itself. Congress has no power to enlarge, restrain, construe or define the offence. Its construction is entrusted to the court alone.

By this instrument it is declared that "Treason against the United States shall consist *only* in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

What constitutes "levying war against the Government," is a question which has been the subject of much discussion, whenever an indictment has been tried under this article of the Constitution.

The offence is described in very few words, and in their application to particular cases much difference of opinion may be expected.

We derive our laws as well as our language from England. As we would apply to English dictionaries and classical writers, to ascertain the proper meaning of a particular word, so when we would inquire after the true definition of certain legal phraseology we would naturally look to the text writers and judicial decisions which we know that the framers of our constitutions would regard as the standard authorities in questions of legal definition.

Otherwise the language of the Constitution on this subject might be subject to any construction which the passion or caprice of a court and jury might choose to give it in times of public excitement.

At one time the Constitution might be nullified by a narrow construction, and at another time the life and liberty of the citizen be sacrified by a latitudinous one.

The term "levying war," says Chief Justice Marshall, "is not for the first time applied to treason by the Constitution of the United States. It is a technical term. It is used in a very old statute of that country whose langage is our language, and whose laws form the substratum of our laws. It is scarcely conceivable that the term was not employed by the framers of our Constitution, in the sense which has been affixed to it by those from whom we borrowed it. So far as the meaning of any terms, particularly terms of art, is completely ascertained, those by whom they are employed, must be considered as employing them in their ascertained meaning unless the contrary is proved by the context."

Since the adoption of the Constitution but few cases of indictment for treason have occurred, and most of those not many years afterwards. Many of the English cases, *then* considered good law and quoted by the best text writers as authorities have since been discredited if not overruled in that country. The better opinion there at present seems to be that the term "levying war" should be confined to insurrections and rebellions for the purpose of overturning the government by force and arms. Many of the cases of constructive treason quoted by Foster, Hale, and other writers, would perhaps now be treated merely as aggravated riots or felonies.

But for the purposes of the present case, it is not necessary to pursue this subject further, or to look beyond the cases decided in our own country. The subject is one of too serious importance to allow this Court to indulge in speculations or wander from the safe path of precedent.

In England, all insurrections to imprison the King, or to force him to change his measures, or to remove evil counsellors; to attack his troops in opposition to his authority; to carry off or destroy his stores provided for defence of the realm; if done conjointly with and in aid of rebels or enemies, and not only for lucre or some private and malicious motive; to hold a fort or castle against the King or his troops, if actual force be used in order to keep possession; to join with rebels freely and voluntarily; to rise for the purpose of throwing down by force, all enclosures; alter the law or religon, &c.; to effect innovations of a public and general concern, by an armed force or for any other purpose which usurps the government in matters of a public and general nature. All these acts have been deemed "a levying of war" So also to have insurrections to redress by force national grievances; or to reform real or imaginary evils of a public nature and in which the insurgents had no private or special interest, or by intimidation to force the repeal of a law.

But when the object of an insurrection is of a local or private nature, not having a direct tendency to destroy all property and all government, by numbers and armed force, it will not amount to treason.

In the case of Bollman and Swartout, in the Supreme Court of the United States, it is decided "That it is more safe as well as consonant to the principles of our Constitution, that the crime of treason should not be extended by construction to doubtful cases."

"That to constitute the specific offence, war must be actually levied against the United States; to conspire to levy and actually to levy war are distict offences." This case also recognized the doctrine laid down by Judge Chase in Fries' case,

that "To complete the crime of levying war, there must be an actual assemblage of men for the purpose."

"If a body of people conspire and meditate an insurrection to resist or oppose the execution of any statute of the United States, by force, they are guilty only of a high misdemeanor; but if they proceed to carry such intention into execution by force, they are guilty of the treason of levying war, and the quantum of the force employed neither lessons nor increases the crime, whether by one hundred or one thousand persons is wholly immaterial."

"A combination or conspiracy to levy war against the United States is not treason unless combined with an attempt to carry such combination or conspiracy into execution; some actual force or violence must be used in pursuance of such design to levy war; but it is altogether immaterial whether the force used is sufficient to effectuate the object; any force, connected with the intention, will constitute the crime of 'levying war.'"

In Mitchell's case it was decided that to resist or prevent by armed force, the execution of a particular statute of the United States, is a levying war against the United States, and consequently treason within the true meaning of the Constitution.

And in Fries' case, "that an insurrection or rising of any body of people within the United States, to attain by force or violence any object of a great public nature, or of public, national and general concern, is a levying of war against the United States."

"That any insurrection to resist or prevent by force or violence the execution of any statute of the United States, under any pretence of its being unequal, burthensome, oppressive or unconstitutional, is a levying of war against the United States within the Constitution."

And again—"If the intention be, to prevent by force of arms, the execution of any Act of Congress altogether, any forcible opposition calculated to carry that intention into effect, is levying war against the United States."

But the resistance of the execution of a law of the United States accompanied with any degree of force, if for a private purpose, is not treason. To constitute that offence the object of the resistance must be of a public and general nature.

I do not think it necessary to quote further from the decisions of my predecessors. It will suffice to say that the late charge of my brother Kane to the Grand Jury, in the Circuit Court, contains what I believe to be a correct statement of the decisions on this subject, and that I fully concur in the doctrines stated, and the sentiments expressed therein.

In the application of these principles of construction to the case before us, the jury will observe, that the "levying of war," against the United States, is not necessarily to be judged of alone by the number or array of troops. But there must be a conspiracy to resist by force, and an actual resistance by force of arms or intimidation by numbers. The conspiracy and the insurrection connected with it must be to effect something *of a public nature*, to overthrow the government, or to nullify some law of the United States, and totally to hinder its execution, or compel its repeal.

A band of smugglers may be said to set the laws at defiance, and to have conspired together for that purpose, and to resist by armed force, the execution of the revenue laws; they may have battles with the officers of the revenue, in which numbers may be slain on both sides, and yet they will not be guilty of treason, because it is not an insurrection of a public nature, but merely for private lucre or advantage.

A whole neighborhood of debtors may conspire together to resist the Sheriff and his officers, in executing process on their property—they may perpetrate their resistance by force of arms—may kill the officer and his assistants—and yet they will be liable only as felons, and not as traitors. Their insurrection is of a private, not of a public nature; their object is to hinder or remedy a private not a public grievance.

A number of fugitive slaves may infest a neighborhood, and may be encouraged by the neighbors in combining to resist the capture of any of their number; they may resist with force and arms, their master or the public officer, who may come to arrest them; they may murder and rob them; they are guilty of felony and liable to punishment, but not as traitors. Their insurrection is for a private object, and connected with no public purpose.

It is true that constructively they may be said to resist the execution of the fugitive slave law, but in no other sense than the smugglers resist the revenue laws, and the anti-renters the execution laws. Their insurrection, their violence, however great their numbers may be, so long as it is merely to attain some personal or private end of their own, cannot be called *levying war*. Alexander the Great may be classed with robbers by moralists, but still the political distinction will remain between war and robbery. One is public and national, the other private and personal.

Without desiring to invade the prerogatives of the jury in judging the facts of this case, the Court feel bound to say, that they do not think the transaction with which the prisoner is charged with being connected, rises to the dignity of treason or a levying of war. Not because the numbers or force was insufficient. But 1st, For want of any proof of previous conspiracy to make a *general and public resistance to any law* of the United States.

2d. There is no evidence that any person concerned in the transaction knew there were such Acts of Congress, as those with which they are charged with conspiring to resist by force and arms, or had any other intention than to protect one another from what they termed kidnappers, (by which slang term they probably included not only actual kidnappers, but all masters and owners seeking to recapture their slaves, and the officers and agents assisting therein.)

The testimony of the prosecution shows that notice had been given that certain fugitives were pursued; the riot, insurrection, tumult, or what-

ever you may call it, was but a sudden "*conclamatio*" or running together, to prevent the capture of certain of their friends or companions, or to rescue them if arrested. Previous to this transaction, so far as we are informed, no attempt had been made to arrest fugitives in the neighborhood under the new act of Congress by a public officer. Heretofore arrests had been made not by the owner in person, or his agent properly authorized, or by an officer of the law.

Individuals without any authority, but incited by cupidity, and the hope of obtaining the reward offered for the return of a fugitive, had heretofore undertaken to seize them by force and violence, to invade the sanctity of private dwellings at night, and insult the feelings and prejudices of the people. It is not to be wondered at that a people subject to such inroads, should consider odious the perpetrators of such deeds and denominate them kidnappers—and that the subjects of this treatment should have been encouraged in resisting such aggressions, where the rightful claimant could not be distinguished from the odious kidnapper, or the fact be ascertained whether the person seized, deported or stolen in this manner, was a free man or a slave.

But the existence of such feelings is no evidence of a determination or conspiracy by the people to publicly resist any legislation of Congress, or levy war against the United States. That in consequence of such excitement, such an outrage should have been committed, is deeply to be deplored. That the persons engaged in it are guilty of aggravated riot and murder cannot be denied. The assault and murder were wantonly committed, after all attempt to execute the process had been abandoned.

This insult upon the laws of the country deserves, and I presume will receive, condign punishment on the persons who shall be proved to be the guilty participators in it. But riot and murder are offences against the State government. It would be a dangerous precedent for the Court and jury in this case to extend the crime of treason by construction to doubtful cases.

The time may come when an elective judiciary, dependent on the will of the majority (which is here the sovereign power) may use such a precedent to justify the foulest oppression and injustice, and the tragedies enacted by a Scroggs and a Jeffries be repeated, and again sully the page of history.

But I would not be doing justice to all parties concerned in this prosecution, if I did not express my cordial approbation of the course pursued by the authorities of the United States and State of Maryland on this occasion.

This is the second instance in which a citizen of Maryland, in the legitimate pursuit of rights, guaranteed to him by the Constitution, has been foully murdered on the soil of Pennsylvania. As might be expected, it created a great excitement, and a just feeling of indignation in the breasts of the people of Maryland.

The act of 1850, passed to secure them in the enjoyment of their acknowledged rights, had been received with a shout of disapprobation, in certain parts of the country. Meetings had been held in many places in the north, denouncing the law and advising a traitorous resistance to its execution: conventions of infuriated fanatics had incited to acts of rebellion; and even the pulpit had been defiled with furious denunciations of the law, and exhortations to a rebellious resistance to it.

The government was perfectly justified in supposing that this transaction was but the first overt act of a treasonable conspiracy extending over many of the Northern States, to resist by force of arms the execution of this article of the Constitution and the laws framed in pursuance of it. In making these arrests, and having this investigation, the officers of government have done no more than their strict duty.

The activity, zeal and ability, which have been exhibited by the learned attorney of the United States, in endeavoring to bring to condign punishment the perpetrators of this gross offence, are deserving of all praise. It has given great satisfaction to the Court also, that the learned Attorney General of Maryland, and the very able counsel associated with him, have taken part in this prosecution.

And I am persuaded that notwithstanding the unfortunate and disgraceful occurrence which has taken place, and the just feelings of indignation felt by the people of Maryland, caused by it; this meeting of that State by its representative here with the people of Pennsylvania, will tend to efface all angry feelings, and foster those of respect and friendship between the people of these adjoining States.

And though the duty of punishing the perpetrators of this outrage, may have to be transferred in whole or in part, to the courts of Lancaster County, we have an assurance from the activity and zeal, already exhibited by the law officers of that county, that it will be performed with all fidelity.

With these remarks the case is committed to you.

[Judge GRIER announced to the jury his intention of remaining in Court for a short time, for the purpose of receiving their verdict, upon which they retired, and after an absence of about fifteen minutes returned.]

CLERK. Jurors will please answer to their names.

All jurors present.

CLERK. Gentlemen of the Jury, have you agreed upon your verdict?

JURORS. Yes, Sir.

CLERK. Prisoner, stand up. Jurors look upon the prisoner. Prisoner look upon the jurors. How say you, Jurors, is Castner Hanway guilty of the Treason, of which heretofore he stands indicted in the manner or form as he stands indicted, or not guilty.

JURORS. NOT GUILTY.

CLERK. Gentlemen of the Jury, hearken to your verdict as the Court have it recorded. You say that Castner Hanway is not guilty of the Treason for which heretofore he stands indicted. in the manner and form in which he stands indicted, and so you say all.

JURORS. Yes Sir.

Mr. ASHMEAD. May it please your Honour—against Castner Hanway, the defendant, who has just been acquitted, there were four other bills in the District Court for misdemeanour. Considering the circumstances of the case, and the ordeal through which he has passed, I might as well state, if there is no other process to prevent it, I know of no other obstacle in the way of his discharge.

JUDGE GRIER. Castner Hanway is therefore discharged.

MR. ASHMEAD. I will enter a "nolle prosequi" on other bills for misdemeanor found against him.

JUDGE GRIER. Gentlemen of the Jury you are discharged.

JUDGE KANE. Until Wednesday next, at 10 o'clock.

The Court is adjourned till 10 o'clock on Wednesday, December 17th.

Wednesday, December 17, 1851.

COURT WAS OPENED AT 10 O'CLOCK.

PRESENT, JUDGE KANE.

List of Jurors called.

J. W. ASHMEAD, (*District Attorney.*) *May it please your Honour.* It is not my intention to try the cases of the other defendants, who are in custody, charged with having committed High Treason against the United States. Judge GRIER has decided, that taking the whole of the evidence given on the part of the government in the trial of Hanway to be true, it does not constitute the crime charged in the indictment. He does say, however, that the facts proved make out the offences of riot and murder, and that they are cognizable only in a State court. Under these circumstances, it is my design to enter a *nolle prosequi* on all the untried bills for treason, and to transfer the custody of the prisoners to the county of Lancaster, to await the result of such proceedings as the State authorities may deem it necessary to institute. Detainers have already been lodged with the keeper of the Moyamensing prison, by Mr. John L. Thompson, the District Attorney of Lancaster county. I feel conscious that I have fully discharged a responsible public duty, and cannot but regret, that the parties who participated in the disgraceful occurrences at Christiana, have thus far eluded all the efforts made to bring them to justice.

JUDGE KANE. I do not know that the District Attorney asks the action of the Court in any way.

MR. ASHMEAD. I do not. My object is merely to inform the Court of the conclusion at which I have arrived. I have no motion to submit, and cannot perceive that the action of the Court is in any way necessary.

JUDGE KANE. The notice, Gentlemen of the Jury, which the District Attorney has given us, makes it plain that there will be no further occasion for your attendance during this term. It only remains, therefore, for the Court to render you thanks for the fidelity with which you have attended, at some inconvenience to yourselves, and to discharge you for the term.

JOHN M. READ. I desire to bring to the notice of the Court, the subject of paying the witnesses subpœned by Castner Hanway, and which witnesses were material and necessary to his defence. The United States is bound to pay them, and it has been suggested at a previous session of the Court.

MR. ASHMEAD. The proper way to bring up the question will be for the defendant's counsel to take a rule to show cause why their witnesses' bill should not be taxed by the defendant and paid by the United States, and fix some day for hearing an argument upon it. I will then be prepared to discuss it fully. It is a question of great practical importance, and likely to establish a precedent for future cases.

JUDGE KANE. The authority to pay a defendants' witnesses, resides constructively in the Court.

MR. READ. The Court have a precedent for it in the case of Aaron Burr, to be found in 1 Burr's trial, 531. In that case it was objected on the part of the United States, and after having been fully argued, was allowed to Burr's witnesses. I ask, however, for a rule to show cause, to be returnable on such day as may suit the convenience of the Court.

The rule to show cause was granted, and made returnable on Friday Dec. 19th, at 10 o'clock, A. M.

CIRCUIT COURT OF THE UNITED STATES.

Friday, Dec. 19th, 1851.

THE COURT OPENED AT 10 O'CLOCK.

PRESENT, JUDGE KANE.

MR. JOHN M. READ. This, may it please your honours, is an important question to my client. It involves the question, whether he is to be placed in somewhat the same situation that he was before the commencement of this prosecution, or whether he is to be entirely ruined? Because, that he is to pay in some shape or other—or somebody is to pay the witnesses something on his behalf, is clear; and if he is to pay it, he may as well be put in prison by some one or other of them, as by the United States. It is not, therefore, an ordinary question of a few dollars, but either this individual acquitted under the charge of the court, and by a jury of his country, is to be turned out upon the world a pauper—the whole of his small earnings have been exhausted in the defence of himself before this court, and the remainder, if he has any, are to be taken to pay the witnesses for his defence, and made necessary by the charges on the part of the United States: and the question is, whether a precedent set by the highest authority in this country, is not to form a precedent for this court, until some other court choses to reverse it.

This is not the case, as it might have been, of a rich man in this community worth a hundred or two hundred thousand dollars, or as Astor or Girard, worth five millions, to whom one, two or three thousand dollars would have been nothing, but this is a question of life or death—whether he is to be indebted to the charity of these witnesses for coming here, or he is to pay them, or the United States; as I contend they are bound, —are to pay them.

I read on Wednesday a passage from p. 531, Vol. 2, of Burr's trial.

This subject was in some measure or other before the court nearly three months, that is, from the month of June till the month of August, when the decision was made, and it arose at an early period of the case, when the Chief Justice of the United States decided exactly as Judge Tilghman decided in 1833, here, before the repeal of the Judiciary Act by John Adams,—that the party was entitled to process before he was indicted. In the course of Burr's trial, his counsel moved for a subpœna *duces tecum*, to the President of the United States, to bring certain papers before the court. Your honor, by turning back to this portion of Burr's trial, will find, as far back as page 121, of 1 Burr, &c., (reads.)

It was acknowledged that the President could be subpœnaed, in the course of the argument—various concessions were made, and it was narrowed down to a very simple principle in fact. At pages 177–8, is the deliberate opinion of the Chief Justice, and I state it for the purpose of showing, that this question of summoning witnesses, had been made before the Chief Justice, in June, 1807, and the final order was not made till August, 1807, so that there was an opportunity for deliberation for nearly three months, and the last decision is to be considered as made on the fullest reflection. (Reads.)

Now may it please your honours, I have read the whole of that, to show that in June, 1807, this question in some form or other was presented directly to the mind of the Chief Justice of the United States, and when in August, 1807, he makes the order, it is upon full reflection, and it is the deliberate opinion of the greatest law officer that ever presided in a court of justice in the United States. There is not a single authority against this. I will challenge my learned friend the District Attorney, to produce a single authority from the courts of the United States, that has said that this was not the law of the land.

That was the case of witnesses summoned by Col. Burr, and never examined; the whole case terminated because the evidence on the part of the prosecution was insufficient to sustain the accusation. It is a case on all fours with this. There is authority. If there is to be a contradiction where is it? Is there any court in the United States, or any decision, that has said Chief Justice Marshall was wrong in that decision? And it is evident that question was presented to his mind three months before the decision, and received the deliberate attention of the judge.

In addition to that, the attorney of the United States, who took every objection there it was possible for man to take, to the course of proceeding on the part of Col. Burr and his counsel, does not dare to say they shall not be paid—his only objection is, that it will take too large an amount of money from the public treasury. In this case, your honor, I know will not look at the amount, except to see if it will ruin this man. You will consider it upon a question of principle; whether five dollars or five thousand, it is the same only so far as my client is concerned; if five dollars, it would not be worth the argument; if five thousand, it will be ruinous.

As to the expenses of the United States, I have nothing to do with them; if they institute these proceedings, they must pay the expenses. In the course of this trial, there has been a large sum of money expended for a useless object. I do not blame the United States for it, but to bolster up one witness, more has been expended than would pay us; a very large amount of money has been paid to bring witnesses here at the request of a particular individual, and that individual entirely disbelieved by the jury, and no credit given to him; a large number of witnesses were examined, and paid for days that they probably never attended. I do not blame the attorney of the United States for that, but the question is, whether this poor man who has been acquitted, is to be turned out on the world, and after such a decision as this, he is not to be paid.

JUDGE KANE. The case of Burr has this one point of difference, which may be worth a notice. The payment there was pending the trial—it therefore may stand in the same category with a

tender of expenses, in order to enable a witness to be in attendance. After verdict and judgment it may be a question whether there is not a different state of things—whether you do not come to a case of costs rather than expenses. I throw out the idea that you may turn your minds to it.

MR. ASHMEAD. The idea your honor suggests now, is the distinction taken in terms by the act of Congress, upon which I shall rely.

MR. READ. I understand, in relation to more expenses, that some of the witnesses were poor and some were not.

JUDGE KANE. I understand the Chief Justice not to have gone into an inquiry as to the circumstances of each individual. An application was made, and the only question discussed, was the materiality of the testimony. Being satisfied of that, and they being in attendance, he directed the marshal to pay them once a week, I believe, for their support.

MR. READ. To make payment for their allowance, &c., (reads.)

The attorney of the United States agreed in that case, that as soon as they gave their evidence they were entitled to their pay, (reads.)

The District Attorney for the District of Virginia says, the law contemplate that as soon as they gave their evidence—that is our case; we have given our evidence—our witnesses are in the state in which he said they ought to be. The objection was, that they might not be material, and that they ought not to be paid then, but the law contemplated that they should be paid the moment they gave their evidence; that implies, that if they had given their evidence the District Attorney would have said, they have given their evidence and they are material witnesses, and they must be paid. Otherwise in capital cases involving life, if the witnesses are to come from a remote part of the United States, which was not provided for in the act, and which does not fulfil the constitutional provision—if they are to come from a remote part of the United States how is it possible that any man tried for a capital crime can ever have such process as the United States have. By the terms of the Constitution and amendments, it is unquestionably intended that in a capital case the defendant shall be placed on the same footing as the United States; if they try him for his life they are bound to go to the expense—if he has witnesses they are to pay them. If he is convicted and hung, who is to pay the witnesses? If he is acquitted, who is to pay them? The United States—after they have hung a man, cannot attaint him, and the moment they hang him, all claim upon him is gone, if he is hung the claim is upon the United States; and if he is acquitted, upon whom is the claim? Upon the United States. The provision of the Constitution which was adopted after the Act of 1790—the eighth amendment to the Constitution provides, that there shall be a perfect equality, and that is the meaning of it. By looking at the debates in the conventions of the States, particularly in Virginia and the Southern States, where this question of trial by jury was discussed in every possible shape and form, particularly as according to the original Constitution, there was no provision for this trial by jury; they put into the amendment that the party was to be placed upon the same footing with the United States, and in all capital cases, especially in treason, he was to have the full benefit of process; and if convicted, the witnesses were to be paid by the United States; if acquitted, it was to be the same. In the case of Burr, the very difficulty your honor mentioned was in the mind of Mr. Hanway, and he agreed that if the evidence was closed, they might be paid, but tid it was, they might be immaterial, and be paid improperly.

In the case of The United States *v.* Moore, in Wallace's Reports, page 23, decided at May Sessions, 1801, (reads.) At page 28, (reads.)

MR. ASHMEAD. To save time, I want it understood, that I do not deny that he is entitled to process at any time.

MR. READ. I understand that—but my friend wants to stop there, and to say that he is entitled to process but not entitled to the means of getting his witnesses here, and keeping them here. I contend, that the construction of Chief Justice Marshall is a correct one; the defendant is put on an equality with the United States, and that is, that the United States shall pay his witnesses. It is a legitimate result from all these authorities. It is the result at which Chief Justice Marshall arrived, and it is the result at which I ask your honor to arrive, (reads.)

I cite that because it is the germ of the decision of Chief Justice Marshall, six years afterwards. This was in 1801, and in 1807 the same conclusion was come to; both of the judges were men of the utmost purity of character.

JUDGE KANE. Judge Tilghman evidently contemplated the power to put a witness under recognizance—he goes further than a subpœna.

MR. READ. He construes that article of the amendment of the Constitution, and the Act of 1790 was passed before that was finally ratified by the States; and it is not only the provision in the law itself which I think is perfectly clear—but it is backed by a constitutional provision.

MR. ASHMEAD. The same provision is in the constitution of the State of Pennsylvania.

MR. READ. I know the District Attorney does not want to pay these costs, but our object is to have them paid; for I say, if this case were submitted to the people of the United States independent of any law—not asking your honour, of course, to take notice of anything of that kind—they would say, the moment the man is acquitted let his costs be paid. Now I say, is there not something in the constitution to allow the man's witnesses to be paid whether he be acquitted or convicted? It is impossible that there should not be some place of payment. After the man is hung, you can get nothing out of him, and after he is acquitted, he should certainly be in the same position as regards this matter as if convicted. This I know is not from the common law. What have they done in England? Comparatively nothing, except that so far as the prosecutor and the witnesses are concerned, they have been daily extending his ex-

penses and have been allowing the courts to give rewards to witnesses who have been diligent in finding out crimes. We pretend to be favourable to defendants, but what are they? Till within the last few years, except in cases of felony, they have not been entitled to counsel, and in cases of treason, prior to the statute of William III. they had no counsel except to argue points of law. I say that when the constitution of the United States was formed, we took a new start, and we began and laid down the principle appearing in the amendments, that the defendant shall have the same advantages as the United States, and when the United States undertake to pay their witnesses they are bound to pay the witnesses of the defendant particularly when he is acquitted. His honour the Chief Justice puts it upon the constitution and upon the sacred rights of man and the general usage of the country—and not upon the usage of a particular State. That is the ground I take. I may be wrong, but I know that I can produce one decision up to the point, decided by the highest law officer in the United States without contradiction, not a single soul has ever complained of it, and all you want is such a decision, and now forty-four years afterwards we are not to go back and say it was wrong. Chief Justice Marshall seldom made mistakes, and if he did they would be at least, as in this case on the side of humanity, and not on the side of arbitrary power.

Then, grounding our application to your honor upon the law of 1790, upon the 8th amendment to the constitution, and upon this deliberate decision in Burr's case, in August, 1807, after an argument in June, 1807, I think we have laid a sufficient ground to ask your honor to allow the witnesses to be paid. I am aware that there are two or three acts of congress, to which I will refer—for there has been limited action by congress at different periods in relation to the pay of the witnesses on the part of the defendant, but I believe they will be found to be applicable to cases, not like the present.

The first act, I think, on the subject, is the act of 23d of August, 1842, 5th statutes at large, page 516. It is an act further supplementary, &c. (reads). The next act of congress is the one to which I suppose my learned friend refers. It is the act of 8th of August, 1846, 9th vol. of the laws, page 72. This act, which authorized your honors to transmit indictments from one court to the other, in section 11th says, &c. (reads a part and says), your honor will perceive that up to that, we have by the constitution, compulsory process, entirely independent of the action of the court, (reads further and says), I grant it, that this is a particular provision for a particular case which if you chose to take advantage of it, can be put in that way, (continues reading.)

I would like to know if that is a repeal of any part of the crimes' act of 1790, or a repeal of the amendment to the constitution? No man ever dreamed that that was a repeal of it. Is it a repeal of the act of '42? Not at all. It is a repeal of anything inconsistent with it, and the provision is more large and extensive; and I suppose no man would ever use that provision there, unless the invividual whom he represented was so poor that he had not one red cent in his pocket. It asks a man what he expects to prove to lay open his whole case to the United States, is this a following out of the constitution? It is a law limited to itself, and when we come to apply under that law we will be entitled to what it gives us and nothing more, but our application is under the crimes' act and under the 8th amendment to the constitution, and under the decision of Chief Justice Marshall.

May it please your honor, this act has nothing to do with this question, and the gentlemen who put it there had no idea of its ever repealing the crimes' act of 1790. Upon the same ground that might as well repeal the counsel part, for it is inconsistent with it. If the defendant is to disclose all his evidence to the United States, this is no boon at all; it is an improper attempt on the part of the congress of the United States to get at a man's case before the United States has got its own case arranged. It is wrong, it is not inconsistent in any way with the provision, and I take it, it has nothing to do with it.

I have laid the ground before your honor, upon which we think that we are entitled to the payment of these witnesses; and the ground is, that there is not only the general law of the land, but there is a direct precedent, which if your honor thinks is not, you are bound to overrule, and which you will be called upon to overrule if you decide as my friend the District Attorney of the United States desires.

MR. JOHN W. ASHMEAD. *May it Please the Court*: I agree that this is an important question—a question of principle which should be settled with great care. If your honour should establish the precedent, and make the order that the United States shall pay the expenses of the defendant's witnesses, I think it is very well that a nation has to bear the charge; for if it were to be insisted on in any of the States, I am sure it would not only tend to encourage litigation, but would very soon bankrupt the States, which would establish the rule. I do not see that there is any special reason for it in this case; for I am not disposed to concede that the evidence before the jury exculpated the defendant from all blame; on the contrary, I am inclined to believe, that if there had been in this country such a verdict, as I am told can be rendered by a jury in Scotland—a middle verdict—that it would have been the sort of verdict that would have been presented here. I am told that according to their form, a jury may return a verdict of *guilty* or not guilty, and an intermediate verdict of "*not proven*," and I think that the latter kind of verdict would have been rendered here.

I need not state, that in Hanway's case there was nothing for the jury to decide, but the whole question of law and fact was virtually determined by the court. The Circuit Judge instructed the jury that taking the whole of the testimony given by the United States to be true, it did not make out against the defendant, the offence which was charged in the indictment. Hence the jury can-

not be construed to have found that Hanway was entirely free from blame, but all that the verdict can be considered to have settled is, that the crime charged in the indictment was not sustained by testimony adequate and competent to convict. It is, therefore, a case in which the acquittal of the defendant was wholly upon technical grounds, under circumstances too, where all who saw examined the evidence, must have been satisfied that he was active in instigating the blacks at Christiana, to commit the outrage upon the deceased Mr. Gorsuch, the facts of which are now familiar to the country. I will not pause here to explain the character of the sad occurrences of the 11th of September last, nor repeat to this court the impressions which they every where made upon the public mind. It was at least to be hoped, that all who had participated in these transactions would be speedily brought to justice, and that condign punishment would be inflicted upon the guilty parties. This just expectation has thus far been disappointed, and the past attempt to make them responsible to the criminal laws of the United States, has been defeated in consequence of the evidence not making out the specific offence which was charged in the indictment. It was not treason, said Judge GRIER, but *murder*, and *riot*, and therefore not within the cognizance of the federal tribunals, but subject only to State jurisdiction. Had Hanway therefore, been proceeded against in a State court, and arraigned for murder or riot, the probability is that he would have been convicted of one or the other of these offences. He has escaped condemnation here, not on the ground that he was innocent of all participation in the reckless and bloody deeds which occurred at the house of Parker, but because he did not commit the specific crime alleged against him by the Grand Jury. This being the nature of the facts, what is it that my learned friend upon the other side, asks may close? That your honour should make an order directing the payment of the costs of the defendant's witnesses, out of the treasury of the United States. I deny that any power exists in the court to make the order prayed for, and that even if the power did exist, it should not be exercised under the peculiar circumstances of this case. These propositions I now proceed to defend.

I commence by remarking, that what you are asked to do, is to establish a precedent in respect to costs of a fearful character, and before it is attempted, there ought to be some clear law to sustain it. If the defendant's witnesses are paid in this case, I can see no reason why you may not be called upon to pay them in every criminal case. The rule should not, and ought not, to be confined to cases where treason against the United States is charged, but if it exists at all, must embrace all descriptions of cases, in which offences are alleged to have been committed against the government. Under such a practice, a defendant could subpœna as many witnesses as he deemed essential to his defence, and they would all serve to be paid out of the public treasury. It is a proposition which has never yet been contended for in any Federal or State tribunal, and for which the decision of no court can be cited.

MR. READ. The State of Massachusetts, has a statute which contains an express provision, that in cases of murder, the defendant's witnesses shall be paid.

MR. ASHMEAD. I have not stated that there is no exception to the rule for which I am contending. In perhaps all of the States there are statutory provisions upon the subject of costs in both civil and criminal cases. So there is an act of Congress upon the same subject, which I will have occasion to cite and examine hereafter. If, however, there be a statute of Massachusetts, which give costs to a defendant's witnesses in cases of murder, instead of conflicting with my positions, it strengthens and confirms them. It shows that without the statute, the costs could not be had, and hence, that it required express legislation to give them.

The same thing is true in respect to costs in the Courts of the United States. A defendant at common law was not entitled to have his witnesses paid. How then could he procure payment unless by virtue of an act of Congress, which met the case? If the common law gives him no such right, and no act of Congress provided a remedy, where can a defendant go for relief? Surely not to the Court, for it possesses no powers others than those derived from the law.

The decision of the late Chief Justice MARSHALL, or rather the order made by him in the case of Aaron Burr, is relied upon as establishing a precedent which must govern this Court. That case was tried in 1808, and I assert, that from that time to the present day, there is not an order of a similar kind to be found upon the minutes of any court, or on the pages of any book of reports. Is it not strange, that in the numerous cases which have occurred in the Courts of the United States, where defendants have been tried for criminal offences, that no counsel learned in the law should have imagined or supposed that the witnesses for a defendant were entitled to be paid out of the treasury of the United States, in the same manner that the witnesses for the prosecution were paid, and that the discovery should for the first time be made in the present case? If a State Court were to hold the doctrine that a defendant's witnesses could be paid out of a state or county treasury, it would soon bankrupt the State in which such a practice should prevail; and if extended to the federal courts, it would make the expense a heavy drain upon the national treasury, which would soon be felt by the people. There are no circumstances whatever which would justify any such rule, and no precedents can be found to sustain it. Let us now examine what was done in the case of AARON BURR, and see whether it bears any analogy to the case now before the Court. It will be found in the first volume of the report of his trial, page 531. What is said?

"Mr. BOTTS moved the Court to direct the Marshal to make payment daily of their allowance to about twenty witnesses, most of whom were so poor that they could not subsist without

it. He had hoped the marshal would have paid them without this application. Colonel BURR thought them material, and summoned them from the best information he could obtain; and when the United States ever imprisoned witnesses to compel their attendance, those of the accused ought at least to be supplied with the means of subsistence.

"The marshal said that as the number of witnesses were so great, and many of them were said to know nothing of the subject in controversy, he was cautioned by the Attorney for the United States, not to pay them till their materiality was ascertained, or till the court ordered him.

"Mr. Hay said that the expenses were so enormous that they would be felt by the national treasury, though it was full. This justified the caution alluded to; and the laws contemplated to pay the witnesses as soon as they gave their evidence.

"Colonel Burr said, that when the Attorney cautioned the Marshal, it was supposed that he had summoned between two and three hundred witnesses, whereas the truth was, that they did not exceed twenty; that they were material; that some of them were summoned to repel what might be said by the witnesses for the United States; that the United States had many advantages in commanding the attendance of their witnesses, which he had not; that he would not acquiesce in the establishment of a principle that might prove injurious to others; that the witnesses ought to be paid, and he hoped that there would be no more difficulty made on the subject.

"After some more desultory observations, as the witnesses were stated and considered to be material, the court directed the payment to be made by the marshal."

It is manifest, may it please the court, from what I have read, that there is no resemblance, between the order made by Chief Justice MARSHALL, in the case of AARON BURR, and the order which the court is asked to make in this case. MR. BOTTS put his motion upon the distinct ground, that the witnesses were so *poor that they could not subsist from day to day, unless they were paid by the marshal.* It became a matter of absolute necessity, that some provision should be made for their support, and as the number of them did not exceed twenty, and they were material to the defendant, the court made the order for the payment, the United States Attorney interposing no objection to the action of the court. The question of the power of the court to give such a direction to the marshal, was not raised, and there was no argument or discussion on the subject. Can it now be, that such direction of the chief justice is to be tortured into a solemn decision, that the government is always to pay the witnesses summoned by a defendant, and that the court can direct their per diem compensation to be taxed and settled by the marshal? It never has, heretofore, been considered a case ruling any such doctrine, and is now, for the first time, sought to be used in the case of this defendant, with what success it remains to be seen.

But, supposing the court did possess the precise authority which was exercised in the case of AARON BURR, is there any resemblance between the facts exhibited there, and those which exist in this case? None. Here, the defendant never pretended he was poor, and unable to pay his witnesses, or that they could not subsist from day to day, unless some allowance was made for their maintenance. On the contrary, it is boldly avowed that the defendant is in no such condition, and the ground taken is, that he was innocent of the accusation made against him, because the jury returned a verdict of not guilty, and on that account he is entitled to full indemnity for his losses, viz: the payment of his costs and expenses as matter of right. I deny the doctrine. Chief Justice MARSHALL never designed to establish such a rule. Suppose Mr. BOTTS, instead of informing the court that the witnesses were poor and unable to subsist from day to day, had boldly stated that they were in good circumstances, and had abundant means to meet their daily necessities, and had contended that the government was bound, as matter of right, to pay them, does your honor suppose the order would have been made for their payment? And if it would not have been done under such circumstances, how can it be made upon the state of facts disclosed here? I submit, therefore, that an order made forty-three years ago, upon a point neither debated nor contested, and which has not been recognized since that period, so far as we are informed, by any one of the Circuit or District Courts of the United States, cannot be relied upon as a safe precedent upon which to make the extraordinary decree prayed for in this case.

But, may it please your honor, our learned friend has taken higher ground, and places himself upon the Constitution of the United States. He argues that that instrument generates to a defendant, charged with a criminal offence, compulsory process to bring in his witnesses, and that that includes their per diem payment. With this object, he quotes the sixth article of the Amendments to the Constitution of the United States, passed by Congress on the 4th of March, 1789, and ratified by the legislatures of the requisite number of States. The clause is in these words:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State or district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; *to have compulsory process for obtaining witnesses in his favour*, and to have the assistance of counsel for his defence.'

This clause of the Constitution does prescribe that the defendant shall have compulsory process for obtaining witnesses in his favour. It does not, however, speak of the payment of fees to

witnesses, and such an idea is not included, within the words of the article. It has never been determined by any federal court, to include the payment of the defendants witnesses, and one would suppose, that if it did include so important a right, it would have been constantly claimed, and that everywhere the books would abound with cases which would recognize it as unquestionable. On the contrary, no decided case, not even the dictum of a judge, can be quoted to sustain the ground taken by my learned friend. Now, in opposition to his view, is the fact that a practice has prevailed cotemporaneously with the adoption of this clause in the Constitution, which is against the theory set up on the other side. The force and sanctity of cotemporaneous constructions of public statutes are things of every day familiarity in courts of justice, and there is nothing which judges hesitate more to disturb. Indeed, contemporaneous constructions become part and parcel of the public statute, upon which they have been given. These constructions are so far impressed upon public laws, as to become, as it were, a part of them. It was, to cite a distinguished precedent of this kind, from the force of cotemporaneous constructions of the Constitution of the United States, that the doctrine of the constitutionality of a National Bank derived the chief part of its strength. If the legal history of the construction of statutes were gone into, the instances would be found almost without number, whose constructions, apparently inconsistent with their letter have been adhered to, from a due regard to the sanctity of settled interpretations, upon which contracts had been predicted, and under which rights had been acquired.

The part contraction of this sixth article of the Amendments to the Constitution of the United States, has been adverse to the interpretation put upon it by the other side. The practice in this district, and in every district of the Union, has been, not to pay the witnesses brought by a defendant. It should not be disturbed now, unless some authoritative decision is produced, which so operates upon the judgment of your Honour, as to make a change of practice imperative.

But, the same practice which has prevailed in the federal courts, exists in the State of Pennsylvania, and in other States whose constitutions have provisions similar to that found in the Amended Articles of the Constitution of the United States. In none of those States, are the witnesses subpœnæd by a defendant, paid from the public treasury, except in some special cases under statutory enactments. The ninth article of the Constitution of the State of Pennsylvania, Section IX., is as follows:—

"In all criminal prosecutions, the accused hath a right to be heard by himself and counsel, to demand the nature and cause of the accusation against him; to meet the witnesses face to face; *to have compulsory process for obtaining witnesses in his favour;* and in prosecutions by indictment or information, a speedy public trial, by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers, or the law of the land.'

It will be perceived that this section of the Constitution of Pennsylvania, gives to a defendant in a criminal case, the right "*to have compulsory process for obtaining witnesses in his favour.*" They are the identical words used in the sixth article of the Amendments to the Constitution of the United States, upon which my friend relies, and yet this language never was construed in any court in Pennsylvania, to give pay to the witnesses produced by a defendant, out of either the county or state treasury. The county never pays the fees of a defendant's witnesses under any circumstances whatsoever. How comes it then, that if these words, occurring in the Constitution of the State, give to a defendant a right to demand that the fees of his witnesses shall be taxed and paid, in the same manner that the witnesses for the Commonwealth are paid, that not one instance can be found in which it ever has been done? If then, there be no precedents whatever, which favour this new construction proposed to be put upon these clauses in the Constitution of Pennsylvania and of the United States, and there is a settled and uniform practice everywhere prevailing to the contrary, ought it to be disturbed at this late day, to recall the supposed equities of this particular case? I submit, with all due respect to this tribunal, that it would be a dangerous exercise of a doubtful power, to undertake to disturb this practice; and that if the law upon this subject should be changed, the appeal should be made to Congress. It transcends the authority of this court to alter the rule; for the exercise of such a power now would be an act of legislation, not of judicial construction

I would here remark that in Pennsylvania, there is a statute which provides that in all cases of misdemeanors, it shall be competent for the petit jury who try the cause, in case they acquit the defendant, to determine whether the county, the defendant, or the prosecutor shall pay the costs. It has frequently happened, that under its provisions defendants have been acquitted, and the county directed to pay the costs. Notwithstanding this direction by the jury, and the existence of a printed statute giving them full control over the costs, the courts never have directed or permitted the defendant's witnesses to be paid out of the county treasury. How much stronger are the words of this statute than the article of the Constitution already quoted, and yet the judges have uniformly held, that the language used, could not be construed to embrace the payment of the defendant's witnesses. How then can the phraseology of the sixth article of the amendments to the Constitution of the United States be tortured into any construction which makes it obligatory upon the court to order that payment? If it can be, your honor must devise some mode of recovering not yet apprehended by me, before you can bring your mind to any such conclusion.

But, may it please the court, if there was formerly any room for doubt as to the power of this

court over the costs of witnesses produced by a defendant in criminal cases, none can exist any longer. The whole subject is now placed at rest by legislative enactment, and there can be no uncertainty with respect to it hereafter. I refer to the act of Congress, passed August 8th, 1846, section 11. It provides as follows:

"That whenever any indictment shall be pending in any court of the United States, and any defendant thereto shall make an affidavit setting forth that there are witnesses whose evidence is material to his defence, and that he cannot safely go to trial without them, what he expects to prove by each of them, that they are within the district in which the court is held, or within one hundred miles of the place of trial, and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the court in term, or any judge thereof in vacation, may, if it appear proper to do so, order that such witnesses be subpœnaed, if found within the limits aforesaid; and in such case, the costs incurred by such process, and the fees of such witnesses, shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States."

The twelfth section of this act provides, that all acts and parts of acts inconsistent with its provisions are repealed. Does not this law free the whole subject from any further difficulty, and demonstrate that Congress was impressed with the belief, that the courts had no power to order the witnesses brought by a defendant in a criminal case, to be paid out of the national treasury? If such an authority existed before the passage of this law, why was it enacted? What occasion was there for it? Surely none, if, independent of its enactments, the judges had full control over the whole subject of costs, and could, at any time, direct the witnesses who attended for a defendant to be paid by the marshal. In that view of the case it would be altogether a work of supererogation, attended with no practical good. I infer from the very passage of this statute that no such power as that contended for by the learned counsel on the other side, was possessed by the judges, and that it was necessary that legislation should be had to enable this boon to be extended to the poor and unfortunate. Its benefits are only to be obtained upon certain terms and conditions set out in the act, and they are prerequisites which must be complied with, before any relief can be obtained. What then is it, that a defendant must do if he desires to obtain compulsory process to procure the attendance of his witnesses and have an order for their taxation and payment out of the treasury of the United States? I will enumerate: *First*, he must make an affidavit in which he shall set forth that there are witnesses whose evidence is material to his defence, and that he cannot go safely to trial without them. *Second*, he must set out in his affidavit, all the facts he expects to prove by them. *Third*, he must state that the witnesses whose presence he requires, are within the district in which the court is held, or within one hundred miles thereof. *Fourth*, he must swear that he is not possessed of sufficient means and is actually unable to pay the fees of his witnesses. On all these things being complied with, but not otherwise, it is made lawful for the court to do what? To order that said witnesses be subpœnaed, if found under the designated limits "and that the costs incurred by such process, and the fees of such witnesses, shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed on behalf of the United States."

Now, may it please the court, if you have a general power, independent of this law, by virtue of your mere certificate, to direct the marshal to pay the fees of witnesses brought into this court by a defendant in a criminal proceeding, why did Congress pass this act? They must have acted upon one of two grounds: either that no power existed by law to compel the government to pay for the attendance of a defendant's witnesses, or else they must have taken it for granted, that the authority did exist, and meant to limit and qualify its exercise for the future. Either view is fatal to the case of the defence. This act of Congress meant to introduce a system that should enable the poor and friendless to defend themselves, when indicted for crime; and with this object, the government provided for their necessities, by agreeing to pay for serving their subpœnas and the attendance of their witnesses. In this respect, the United States has been magnanimous and generous to an extent much beyond what has been exhibited by any other nation on the face of the earth. No state in this Union has made any such provision for the security of the friendless and destitute, when assailed by false accusations, and it is a statute which will always reflect honor upon the heads and hearts of the men who projected and passed it.

But, sir, is this great statute in favor of humanity to be represented here as conferring no boon? Are we to be told, that the power it professes to give, always existed in the courts of the United States, and that there was no necessity whatever for the intervention of Congress in the matter? Then show us where it was ever exercised prior to its passage, either in this city or elsewhere, unless, perhaps, in the solitary case of Aaron Burr? There the late Chief Justice of the United States did consent to direct the marshal to pay a few poor and needy witnesses, upon representation being made to him, that they could not subsist from day to day unless relief was afforded them. Had Castner Hanway or his counsel, while the trial was progressing, informed the court that he also had a few witnesses material to his defence, and that their necessities were such that they could not subsist from day to day, unless means were afforded them by the marshal, I would not have resisted the making of an order by the court for their maintainance, but would instantly have yielded to the promptings of humanity and justice. But I never can consent that it shall be ruled, without opposition from me, that a defendant charged by the United States with crime, when acquitted by the verdict of a jury, shall, in consequence of that acquittal, and as a matter of right, be entitled to an order

from the court for the payment of his witnesses. I am bound thus plainly to speak my views upon this important question, because I feel that in resisting this motion, I am in the path of public duty. Justice to myself, as well as my obligations to the government, require that I should strenuously resist, what I consider to be a dangerous innovation upon the settled practice of all the courts of the United States. It would establish a precedent of a pernicious tendency, contravene the language and spirit of the act of 1846, and be tantamount to giving a bounty for the commission of offences. It would be particularly so in this case, where the defendant was acquitted purely and wholly upon technical grounds. Had he been indicted for an offence not punishable with death, no intelligent man can doubt but that a prompt verdict of guilty, would have been returned against him. I do not even believe that the jury which tried Hanway, considered him innocent of the particular offence charged against him. When they rendered their verdict, they did not mean, I suppose, to be understood as saying so; it was designed simply to imply that they had not *full* and *competent testimony* to establish his guilt.

MR. READ. I have permitted Mr. Ashmead to say a great deal without interruption, but he has no right to reflect upon the individual acquitted. The jury came into court at the close of the case, with a verdict of not guilty, and they stated that there was no period during the trial, in which they would not have acquitted the defendant.

MR. ASHMEAD. I may be somewhat out of order in alluding to these matters, but Mr. Read, adverted to these topics himself. He spoke of the defendant's innocence, his sufferings and privations, and asked for the payment of his witnesses, on the ground that he was unjustly persecuted, and had been ruined by the expenditures necessarily made by him in preparing for his defence.

JUDGE KANE. The court has only to say this. The verdict of not guilty by the jury, is an acquittal absolute, and the court cannot inquire into the considerations which have led to it. If the law was with the defendant, it was as available, as effectual, as conclusive for him, as if the evidence had been with him. In either case, his acquittal has the same effect.

MR. ASHMEAD. What your honor has remarked is certainly true. I would not have alluded to the facts given in evidence against Mr. Hanway, had they not been alluded to and dwelt upon, by my distinguished friend upon the other side. He spoke with much eloquence of the entire innocence of the defendant, of every charge that could be brought against him, and represented him as bankrupt in means, and broken up in his business, in consequence of the institution of the criminal proceedings. All this I presume, was done to satisfy the court, that if the power to pay his witnesses was a discretionary one, to be exercised upon a just consideration of the circumstances of the case, that there was sufficient in them to induce judicial interference in his behalf. I have found no fault with the course of argument pursued by Mr. Read, nor do I mean to do so. He has a right, and it is his duty, to press into his case, any fact that will be of service to his client. I commend his zeal in doing so, and cannot but admire the ability with which it has been done. But, surely, I have a right in answering these allegations, and replying to the argument made in favour of the rule, to show that these representations are not consistent with the evidence which was given on the trial, but that the facts are entirely different. It certainly must be so, unless the proposition contended for is, that the order to pay the defendant's witnesses is matter of right, and does not rest at all within the discretion of the court. If this be the doctrine, then, of course, the evidence has nothing to do with this argument; and although Hanway has been acquitted of treason, because the facts did not make out the technical offence, but was proved to have been guilty of murder, riot, and wilfully obstructing the process of the United States, I cannot perceive that it will avail anything. I have not contended that his offence was treason; his honor, Judge Grier, ruled that it was not, and I am not here to find fault with the ruling of the court. I have agreed that if he had been put upon trial for a less offence—one not capital—I would have gone to the jury with an almost moral certainty of his conviction. With such impressions upon my mind, I do not desire an order to be made for the payment of his witnesses out of the public treasury, because he does not merit it. It is enough that he has escaped all punishment for his participation in the outrages at Christiana; and shall he, in addition, have the order prayed for, which would be a sort of certificate of merit to parade before the country? It is bad enough that he has an extensive immunity for his offences, but it would be much worse if the community should understand that this mark of approbation was given to him by the court as an indemnity for his losses.

MR. READ. If we are to go over this whole ground, I will make my speech again. It is an attempt to attach this man when he is away, and it is unwarrantable on the part of the United States, because they have no right to persecute any man.

JUDGE KANE. The question before me is a simple question of dry law. The party for whom the application is made, may be John Doe, or any one else. The circumstances of his acquittal are entirely unknown to me. I have merely the record of acquittal, and the question is, shall I refer to the clerk for taxation the bills presented to me on behalf of the defendant. All that I can say to the counsel on both sides is, that I have no feeling in the matter; neither shall I regard any consideration whatever but the simple question of taxation, and whether I shall refer it to the clerk for that purpose.

MR. ASHMEAD. I know that your honour has no feeling in this case, and that you will act with the strictest impartiality, and do what you believe to be right. But permit me to remark, that you have not merely the verdict which was rendered on the trial of Hanway, but you have

in addition the testimony which was given before you.

MR. READ. If this is the course of argument—

JUDGE KANE. The Court will ask the counsel a question. "Do I understand the counsel to make the application subject to the discretion of the court, or to the court as a matter of right?"

MR. READ. As a matter of right.

JUDGE KANE. Then I understand it to be, that as of right he is entitled to receive an order from the court, directing the marshal to pay to the witnesses who were subpœnaed and in attendance their bills, provided it be found to the satisfaction of the taxing officer, or the court, that their evidence was material. I understand the materiality of the witnesses was conceded in Burr's case.

MR. ASHMEAD. The answer given by Mr. Read to your honour, very materially lessens my duty, because it has brought down the inquiry to a mere question of law. His allegation is, that where a verdict of acquittal is rendered in a criminal case, that the defendant is entitled to have his witnesses paid by the Marshal, as matter of right. There is no such law; and it is, perhaps, the first time in the history of the country, that such a position has been taken by any counsel. It cannot be law—it is not law, and has never been recognized as such by any court of the United States. It is wholly without precedent, so far as judicial decisions are concerned; and it is against the practice of all the courts of the United States, and of every State in this Union. If all this practice is to be overturned, and a new and dangerous innovation introduced, let us have some reason or authority for making the change. If there be no common law doctrine to be invoked in its support, and no statute of the United States which recognizes it as a principle, whence is the court to obtain the power to do what is asked? Castner Hanway has had his trial; his witnesses were all in attendance; they were examined in court, and he has been acquitted, whether upon the merits of his case I will not stop to inquire. He has had all the advantages which the constitution and laws give to any defendant similarly circumstanced, to prepare for his defence. Shall he now transfer the claim which his witnesses have for compensation against him to the treasury of the United States? This is the question the court is called on to determine. If it be ruled in favour of Hanway, it must be ruled in the same way hereafter in the case of every defendant who shall be acquitted by the verdict of a jury. The consequences of such a decision it is impossible now to foresee; and I therefore respectfully ask your honour to pause and ponder upon the question before you make it the law of this court.

MR. READ. I hardly expected my learned friend to have represented the State of Maryland here; and, therefore, I do not intend saying any thing more about it. I am sorry he should entertain these feelings and express them in a court of justice. The case has been decided and Castner Hanway has been acquitted, and your honour looks upon the record as it is, and I will not undertake to make any observations irrelevant to the question now before you.

Now, it is extraordinary that after all the research of the learned district attorney, he has not been able to find a single decision on his part against the payment of these witnesses. Now I defy him to produce a single decision of any in the courts of the United States, where the question has been decided against the defendant, where the application has been made. I have the only case, except in one decided not to be treason, in the year 1808, in the District of Vermont, and we have no report of it at all. I have the only case, with the exception of Freas's case, which was a conviction, and in that there is a direct precedent in favour of these witnesses, and that direct precedent the attorney for the United States wishes you to disregard, because it was decided by Chief Justice Marshall. I take it, that when he can find a man of the same legal talents and acquirements, to make such a solemn decision as that, then I will give up this authority as nothing, but not before. After solemn argument, and with a full knowledge of the facts, your honour is asked to consider it nothing, because no treason case has occurred since that period.

This is a capital case, and I defy the attorney for the United States to point to a single case where a contrary doctrine has been established. I think I have the advantage of the argument. I have a decision which has never been overruled, and my learned friend has no decision to the contrary. Now with regard to the question of allowance, are you to be frightened by a sort of boog-a-boo, because the District Attorney has not allowed the costs—for that has nothing to do with the decision your honour may make now.

The question is whether this party, who has been acquitted, is to be turned into the world worse than when he came here, or whether he is to be branded, and whether this decision of a Chief Justice of the United States is to be disregarded, upon the ground that no overruling decision has been found? There is no such decision of any court, and when the District Attorney can produce one that is contradictory, I shall be satisfied, but, until he does, there is no other decision except that. I have heard the opinions of the Chief Justice disregarded because they are contradictory to the opinions of my learned opponents, and not those most liked by those engaged with him. I am confident as a private individual the District Attorney would be glad to allow this application, and I have no doubt he thinks it his duty as an officer to oppose this application.

I take it that you have nothing to do with the State of Pennsylvania. The law of Pennsylvania in 1789 was that if a person were acquitted you were to pay the prosecution.

MR. ASHMEAD. It was by statute.

MR. READ. No, Sir. It was the common law of the land.

MR. ASHMEAD. That is the English common law.

MR. READ. It is not the English common law, it was the common law of Pennsylvania, and it requires positive law to remove it; and I have

never heard where the United States ever obliged the acquitted party to pay the expenses of the prosecution. And, therefore, the law of Pennsylvania fails my learned friend.

If it were not for the passage of the bill in 1790, we should have had to pay $1800 to support the testimony of Kline, and that would have been the benefit of an acquittal; and he might as well have staid in the penitentiary for one offence as well as the other, and this bill was passed upon the principles of humanity and justice, as broad as the Constitution itself. The Chief Justice of the United States has disregarded all State authority, and he has gone upon the Constitution, and upon that basis alone has he made this opinion.

Now with regard to the State of Massachussetts. I do not know that it has any such provision as ours. * * * We have various provisons that have been disregarded; and is it to be disregarded because the laws of Pennsylvania happen to be different from those of the United States? It was passed in 1790, I think in the act of the 26th of March. (Reads.)

Who ever heard that that was the law of the United States?

And yet this Pennsylvania authority is authority that the acquitted in 1790 of treason was to be punished with the costs of the prosecution. It is the first time I have listened to an argument of that kind. I say, therefore, that the State of Pennsylvania and its laws have no application, and if that be the practice in the city and county of Philadelphia, or in the State of Pennsylvania, it is different to the practice in any other State. It is different to a peculiar function of the county commissioners who never pay any thing, I believe, except what they cannot help. And it is a little like one of the officers of the government of whom Judge Grier spoke, and who never paid anything unless they were obliged to do so. We have nothing to do with the State of Pennsylvania, but with the Constitution of the United States, and the laws passed under it.

Now the question arises—is the act of 1846, a repeal of the act of 1842? Certainly not. Clearly not. Is it a repeal of the crimes' act? Certainly not. Is it a repeal of the compulsory process, or a repeal of the amendment which gives the compulsory process? Certainly not. Now under these circumstances, what is the difference? Is the United States to be put in a different point of view from that of Massachussetts?

I will refer your honour to the revised statute of Massachussetts, when you will see there is an express provision by the laws of the land for the payment of witnesses in capital cases. In the revised statute of Massachussetts, page 759, you will find an express positive provision, which I think is taken from the case in Burr's trial. (Reads.)

Then having stripped off all this common law here, and the law of Pennsylvania, which had nothing to do with it, we come down to what is the real construction of the constitution of the United States and the laws under it.

Now supposing that this authority, was authority in 1807. What was it authority in? It was not an authority merely that poor witnesses should be paid during trial, but it was pursued upon the ground that the witnesses for the defendant were to be paid at that stage of the prosecution and under those circumstances, and before it was known whether they were material, and whether they were to be executed or not. And it was said by Mr. Hay, that the law contemplated they should be paid. Who? Why the witnesses for the defendant. Because therefore as in a case where a party is entitled to compulsory process, he is also entitled to have his witnesses paid undoubtedly after they have given their evidence.

What is the next stage? Supposing that to be the law, and I do not intend to enlarge upon it. There is an act passed of an especial character, which is intended for persons who are too poor to pay at all. Now we know that we are entitled to compulsory process, and to subpœnas and without any payment, and nobody denies it. There is no doubt about that. And the only effect is that in certain cases, and upon certain proof while the indictment is pending you may get witnesses within a certain distance, and have them paid at that time. But is there a word about when a party has had his witnesses present and they have been examined and found material, and is acquitted, that his witnesses are not to be paid? Is there anything in that law to the contrary? Not one single word. It do'nt affect it in any way. It is a direct provision intended for a special purpose, and that only. Now this is a case which it does not reach. . . . By the amendment of the constitution and by the crimes' act, we are entitled to compulsory process, before the indictment is found at all.—We are entitled to have our witnesses here. That is the decision in Wallace and Burr. What is the condition in an individual thus? That he has a right to that process entirely independent of that act, and they have no power to take it away Well, now, does that apply to this case at all? . . Suppose the witnesses happens to reside more than 100 miles away? are we not entitled like the United States to compulsory process, and allowed to send into a foreign State? They can send the subpœna more than 100 miles off. Well if the United States could send to New Orleans, had not Colonel Burr, the power to send for witnesses for an express purpose, namely, for the purpose of proving his innocence; and have we not the same right to send into a foreign State? And yet that act will not apply at all. It is therefore an act of a peculiar kind, and intended for a peculiar purpose, and to be exercised in peculiar cases, and only to be used, except in a case where a man is too poor to have any counsel, but the courts themselves. But what is asked but that the counsel shall have a full display of the whole case before him, in order to present it to the court and jury. It does not interfere with the crimes act of 1790, nor with the 6th article of the amendment. Well now how is it possible that the defendant can be placed upon an equality with the United States, except that his witnesses shall be paid exactly as the United States witnesses are paid? That is the question which was

submitted to the Chief Justice MARSHALL, and which he decided,—and that is the question we beg leave to submit to you, stripped of all the arguments which have occupied the time and attention of your honor. Let us therefore submit this question without taking up any further of your precious time. That under the circumstances of this case—the party being acquitted in the eye of the law, I will make no other observation than that having been acquitted according to the laws and constitution of the United States, and the only decision of a competent tribunal is that before us and made upon solemn affirmation,—we ask you that the witnesses shall be paid in the manner as first stated it should be done in this case.

OPINION OF JUDGE KANE.

The sixth article of amendments of the Constitution provides that in all criminal prosecutions, the accused shall have compulsory process for obtaining witnesses in his favour.

If I found it necessary to decide what was the proper import of that provision, I think I should hold without hesitation, that it included the right of an accused person, not merely to the process of the Court, but to the service of that process, and to every aid incidentally connected with it, which might be necessary in order to make his right to the testimony of the witnesses available for the purpose of his defence. I should not hesitate as at present advanced, to instruct the marshal, where the case properly arose under that provision of the Constitution, to bring the witnesses, if necessitous, to the place of trial, and to support them during the trial at the public charge. And I understand this to have been the spirit of the decision of Chief Justice MARSHALL in Burr's case. The witnesses there were represented to be poor, and unable to subsist without aid from the Court—and it was admitted that they were material for the defence. I suppose it was under a liberal and just interpretation of this constitutional provision that the Chief Justice felt himself authorized to direct payment to these witnesses of their allowance.

The act of 1846 I regard as merely a legislative affirmation of the principle which was recognized by Chief Justice MARSHALL in Burr's case—that principle the same which I should deduce from the article of the Constitution—that the defendent should have available process, in a word, access to the testimony of witnesses for his defence.

But it seems to me that neither the provision of the Constitution, nor the act of '46, nor the language of Chief Justice MARSHALL can go beyond this.

And it seems to me, too, that the act of Congress goes to this full extent. It provides, that an accused person shall have what I have supposed it was the intent of the framers of the Constitution to guarantee. It makes the three conditions. First, that the subject matter to which the evidence of the witness would go, shall be relevant to the issue. Next, that it is important that that matter be proved, for it is quite possible that the subject matter in regard to which it is proposed to examine a witness, may be relevant to the issue, and therefore in common legal parlance—material,—and yet it may not be necessary that witnesses should be called to prove it before the Court.

It may be waived by the United States—the fact may be conceded, which the witness is called to prove—and in such case there is no necessity for the subpœna to be issued. And I suppose it is for the purpose of enabling the attorney of the United States to declare in his place whether the point is one to be raised by him or controverted by him, that the Court is authorized to enquire what is the particular matter which it is proposed to prove by the witness for whom process is asked. We have in our humbler proceedings in this Court frequently and constantly cases that are closely analogous.

We permit a commission to issue in the District Court, at any time when either party applies for it; but it does not stay proceedings, unless the party applying for it make affidavit, declaring (in his affidavit) what it is the witness is expected to prove, and it is competent then to the other party by admitting the fact so proposed to be proved to relieve himself altogether from the stay of proceedings.

In such a case, when the witness is necessitous, and where the subject matter in regard to which it is proposed to examine him is relevant to the issue, and relates to a point in controversy, the act of Congress of 1846, authorizes the Court to give full relief, and not merely to issue the subpœna and to direct its service, but having brought the witnesses here to place them under recognizance so as to secure their attendance at the time of trial.

In this manner the act enables us to do all that I understand Chief Justice TILGHMAN to have contemplated, when he spoke of the propriety of the defendant being put upon the same footing in all respects with the prosecution.

I do not understand that the case before me is the case provided for by the law. The circumstances in fact negative one essential element of the case:—they negative the necessity. The defendant is entitled to process. He is entitled to the service of process. He is entitled to the support of his witnesses, if there be necessity, if those steps are necessary, to enable him to bring his evidence before the jury, to secure his constitutional and legal rights. But there has been no necessity here. His witnesses have been in attendance—they have been examined—he has had every benefit that he could have anticipated. The case of necessity for the furtherance of justice and the security of his rights has not occurred.

It seems to me that if the claims now made were to be admitted, we might be called on to recognize an analogous case to it, that of a defendant who under the same clause of the Constitution should ask us for the costs of process to compel

the attendance of his witnesses, when in point of fact his witnesses had attended without such process.

There was here no necessitous witness prevented by his necessities from attending for the defence, as in the case supposed there was no need of process.

I do not indeed understand that the motion before the Court can be regarded as an application from the defendant. He is no longer in Court. His rights have been secured to him. It is virtually—I speak according to the letter—it is virtually the application of witnesses, who have been in attendance here, to have their bills taxed.

I find no warrant in any act of Congress, or in any precedent for such a taxation. I must therefore dismiss the motion.

APPENDIX.

THE ACT OF 1793.

AN ACT RESPECTING FUGITIVES FROM JUSTICE AND PERSONS ESCAPING FROM THE SERVICE OF THEIR MASTERS.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.* That whenever the executive authority of any State in the Union, or of either of the territories north west or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such State or Territory to which such person shall have fled, and shall, moreover, produce the copy of an indictment found, or an affidavit made, before a magistrate of any State or Territory as aforesaid, charging the person so demanded, with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged fled; it shall be the duty of the executive authority of the State or Territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority, appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. But if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged. And all costs or expenses, incurred in the apprehending, securing, and transmitting such fugitive, to the State or Territory making such demand, shall be paid by such State or Territory.

SECT. 2. *And be it further enacted, &c.* That any agent, appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her, to the State or Territory from which he or she shall have fled. And if any person or persons shall, by force, set at liberty, or rescue the fugitive from such agent while transporting as aforesaid, the person or persons so offending, shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

SECT. 3. *And be it further enacted, &c.* That when a person held to labor in any of the United States, or in either of the Territories on the northwest or south of the river Ohio, under the laws thereof, shall escape into any other of the said States or Territory, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any judge of the Circuit or District Courts of the United States, residing or being within the State, or before any magistrate of a county, city, or town corporate, wherein such seizure or arrest shall be made, and upon proof, to the satisfaction of such judge or magistrate, either by oral testimony, or affidavit taken before, and certified by a magistrate of any such State or Territory, that the person so seized or arrested, doth, under the laws of the State or Territory from which he or she fled, owe service or labor to the person claiming him or her; it shall be the duty of such judge or magistrate, to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor, to the State or Territory from which he or she fled.

SECT. 4. *And be it further enacted, &c.* That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested, pursuant to the authority herein given or declared; or shall harbor or conceal such person, after notice that he or she was a fugitive from labor, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars, which penalty may be recovered by, and for the benefit of such claimant, by action of debt, in any Court proper to try the same; saving moreover, to the person claiming such labor or service, his right of action for, or on account of, the said injuries, or either of them. (*Approved February* 12, 1793.)

On the 18th September, 1850, the following law, known as the "Fugitive Slave Law of 1850," was passed by Congress.

AN ACT

TO AMEND, AND SUPPLEMENTARY TO, THE ACT ENTITLED "AN ACT RESPECTING FUGITIVES FROM JUSTICE, AND PERSONS ESCAPING FROM THE SERVICE OF THEIR MASTERS," APPROVED FEB. TWELFTH, ONE THOUSAND SEVEN HUNDRED AND NINETY-THREE.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the persons who have been, or may hereafter be, appointed commissioners, in virtue of any act of Congress by the circuit courts of the United States, and who, in consequence of such appointment, are authorized to exercise the powers that any justice of the peace, or other magistrate of any of the United States may exercise

in respect to offenders for any crime or offence against the United States, by arresting, imprisoning, or bailing the same under and by virtue of the thirty-third section of the act of the twenty-fourth of September, seventeen hundred and eighty-nine, entitled "An act to establish the judicial courts of the United States," shall be, and are hereby authorized and required to exercise and discharge all the powers and duties conferred by this act.

SEC. 2. *And be it further enacted*, That the superior court of each organized Territory of the United States shall have the same power to appoint commissioners to take acknowledgments of bail and affidavits and to take depositions of witnesses in civil causes which is now possessed by the circuit court of the United States; and all commissioners who shall hereafter be appointed for such purposes by the superior court of any organized Territory of the United States, shall possess all the powers, and exercise all the duties conferred by law upon the commissioners appointed by the circuit courts of the United States for similar purposes, and shall moreover exercise and discharge all the powers and duties conferred by this act.

SEC. 3. *And be it further enacted*, That the circuit courts of the United States, and the superior courts of each organized Territory of the United States, shall from time to time enlarge the number of commissioners, with a view to afford reasonable facilities to reclaim fugitives from labor, and to the prompt discharge of the duties imposed by this act.

SEC. 4. *And be it further enacted*, That the commissioners above named shall have concurrent jurisdiction with the judges of the circuit and district courts of the United States, in their respective circuits and districts within the several States, and the judges of the superior courts of the Territories, severally and collectively, in term-time and vacation; and shall grant certificates to such claimants, upon satisfactory proof being made, with authority to take and remove such fugitives from service or labor, under the restrictions herein contained, to the State or Territory from which such persons may have escaped or fled.

SEC. 5. *And be it further enacted*, That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and should any marshal or deputy marshal refuse to receive such warrant or other process, when tendered, or to use all proper means diligently to execute the same, he shall on conviction thereof be fined in the sum of one thousand dollars to the use of such claimant, on the motion of such claimant, by the circuit or district court for the district of such marshal and after arrest of such fugitive by such marshal, or his deputy or whilst at any time in his custody under the provisions of this act should such fugitive escape whether with or without the assent of such marshal or his deputy, such marshal shall be liable on his official bond to be prosecuted for the benefit of such claimant, for the full value of the service or labor of said fugitive in the State, Territory or District whence he escaped: and the better to enable the said commissioners, when thus appointed, to execute their duties faithfully and efficiently, in conformity with the requirements of the Constitution of the United States and of this act, they are hereby authorized and empowered, within their counties respectively, to appoint in writing under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties; with authority to such commissioners, or the persons to be appointed by them, to execute process as aforesaid, to summon and call to their aid the bystanders, or *posse comitatus* of the proper county, when necessary to insure a faithful observance of the clause of the Constitution referred to, in conformity with the provisions of this act; and all good citizens are hereby commanded to aid and assist in the prompt and efficient execution of this law, whenever their services may be required, as aforesaid, for that purpose, and said warrants shall run, and be executed by said officers anywhere in the State, within which they are issued.

SEC. 6. *And be it further enacted*, That when a person held to service or labor in any State or Territory of the United States, has heretofore or shall hereafter escape into another State or Territory of the United States, the person or persons to whom such service or labor may be due, or his, her, or their agent or attorney, duly authorized, by power of attorney, in writing, acknowledged and certified under the seal of some legal officer or court of the State or Territory in which the same may be executed, may pursue and reclaim such fugitive person, either by procuring a warrant from some one of the courts, judges, or commissioners as aforesaid, of the proper circuit, district, or county for the apprehension of such fugitive from service or labor, or by seizing and arresting such fugitive, where the same can be done without process, and by taking, or causing such person to be taken, forthwith before such court, judge, or commissioner, whose duty it shall be to hear and determine the case of such claimant in a summary manner; and upon satisfactory proof being made, by deposition or affidavit, in writing, to be certified by such court, judge or commissioner, or by other satisfactory testimony, duly taken and certified by some court, magistrate, justice of the peace, or other legal officer authorized to administer an oath and take depositions under the laws of the State or Territory from which such person owing service or labor may have escaped, with a certificate of such magistracy or other authority, as aforesaid, with the seal of the proper court or officer thereto attached, which seal shall be sufficient to establish the competency of the proof, and with proof, also by affidavit, of the identity of the person whose service or labor is claimed to be due as aforesaid, that the person so arrested does in fact owe service or labor to the person or persons claiming him or her, in the State or Territory from which such fugitive may have escaped as aforesaid, and that said person escaped, to make out and deliver to such claimant his or her agent or attorney, a certificate setting forth the substantial facts as to the service or labor due from such fugitive to the claimant, and of his or her escape from the State or Territory in which such service or labor was due, to the State or Territory in which he or she was arrested, with authority to such claimant, or his or her agent or attorney, to use such reasonable force and restraint as may be necessary, under the circumstances of the case, to take and remove such fugitive person back to the State or Territory whence he or she may have escaped as aforesaid. In no trial or hearing under this act shall the testimony of such alleged fugitive be admitted in evidence; and the certificates in this and the first section mentioned shall be conclusive of the right of the person or persons in whose favor granted, to remove such fugitive to the State or Territory from which he escaped, and shall prevent all molestation of such person or persons by any process issued by any court, judge, magistrate or other person whomsoever.

SEC. 7. *And be it further enacted*, That any person who shall knowingly and willfully obstruct, hin-

der, or prevent such claimant, his agent or attorney, or any person or persons lawfully assisting him, her, or them, from arresting such a fugitive from service or labor, either with or without process as aforesaid; or shall rescue or attempt to rescue such fugitive from service or labor, from the custody of such claimant, his or her agent or attorney, or other person or persons lawfully assisting as aforesaid, when so arrested, pursuant to the authority herein given and declared; or shall aid, abet, or assist such person so owing service or labor as aforesaid, directly or indirectly, to escape from such claimant, his agent or attorney, or other person or persons legally authorized as aforesaid; or shall harbor or conceal such fugitive, so as to prevent the discovery and arrest of such person, after notice or knowledge of the fact that such person was a fugitive from service or labor, as aforesaid, shall for either of said offences, be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months, by indictment and conviction before the district court of the United States for the district in which such offence may have been committed, or before the proper court of criminal jurisdiction, if committed within any one of the organized Territories of the United States; and shall moreover forfeit and pay, by way of civil damages to the party injured by such illegal conduct, the sum of one thousand dollars for each fugitive so lost as aforesaid, to be recovered by action of debt, in any of the district or territorial courts aforesaid, within whose jurisdiction the said offence may have been committed.

SEC. 8. *And be it further enacted*, That the marshals, their deputies, and the clerks of the said district and territorial courts, shall be paid for their services the like fees as may be allowed to them for similar services in other cases; and where such services are rendered exclusively in the arrest, custody, and delivery of the fugitive to the claimant, his or her agent or attorney, or where such supposed fugitive may be discharged out of custody for the want of sufficient proof as aforesaid, then such fees are to be paid in the whole by such claimant, his agent or attorney; and in all cases where the proceedings are before a commissioner, he shall be entitled to a fee of ten dollars in full for his services in each case, upon the delivery of the said certificate to the claimant, his or her agent or attorney; or a fee of five dollars in cases where the proof shall not in the opinion of such commissioner, warrant such certificate and delivery, inclusive of all services incident to such arrest and examination, to be paid, in either case, by the claimant, his or her agent or attorney. The person or persons authorized to execute the process to be issued by such commissioners for the arrest and detention of fugitives from service or labor as aforesaid, shall also be entitled to a fee of five dollars each for each person he or they may arrest and take before any such commissioner as aforesaid, at the instance and request of such claimant, with such other fees as may be deemed reasonable by such commissioner for such other additional services as may be necessarily performed by him or them: such as attending at the examination, keeping the fugitive in custody, and providing him with food and lodging during his detention, and until the final determination of such commissioner; and in general for performing such other duties as may be required by such claimant, his or her attorney or agent, or commissioner in the premises, such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid by such claimants, their agents or attorneys, whether such supposed fugitives from service or labor be ordered to be delivered to such claimants by the final determination of such commissioners or not.

SEC. 9. *And be it further enacted*, That upon affidavit made by the claimant of such fugitive, his agent or attorney, after such certificate has been issued, that he has reason to apprehend that such fugitive will be rescued by force from his or their possession before he can be taken beyond the limits of the State in which the arrest is made, it shall be the duty of the officer making the arrest to retain such fugitive in his custody, and to remove him to the State whence he fled, and there to deliver him to said claimant, his agent, or attorney. And to this end, the officer aforesaid is hereby authorized and required to employ so many persons as he may deem necessary to overcome such force, and to retain them in his service so long as circumstances may require. The said officer and his assistants, while so employed, to receive the same compensation, and to be allowed the same expenses, as are now allowed by law for transportation of criminals, to be certified by the judge of the district within which the arrest is made, and paid out of the Treasury of the United States.

SEC. 10. *And be it further enacted*, That when any person held to service or labor in any State or Territory, or in the District of Columbia, shall escape therefrom, the party to whom such service or labor shall be due, his, her, or their agent or attorney, may apply to any court of record therein, or judge thereof in vacation, and make satisfactory proof to such court, or judge in vacation, of the escape aforesaid, and that the person escaping owed service or labor to such party. Whereupon the court shall cause a record to be made of the matters so proved, and also a general description of the person so escaping, with such convenient certainty as may be; and a transcript of such record, authenticated by the attestation of the clerk and of the seal of the said court, being produced in any other State, Territory, or district in which the person so escaping may be found, and being exhibited to any judge, commissioner, or other officer authorized by the law of the United States to cause persons escaping from service or labor to be delivered up, shall be held and taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned. And upon the production by the said party of other and further evidence if necessary, either oral or by affidavit, in addition to what is contained in the said record of the identity of the person escaping, he or she shall be delivered up to the claimant. And the said court, commissioner, judge, or other person authorized by this act to grant certificates to claimants of fugitives, shall upon the production of the record and other evidences aforesaid, grant to such claimant a certificate of his right to take any such person identified and proved, to be owing service or labor as aforesaid, which certificate shall authorize such claimant to seize or arrest and transport such person to the State or Territory from which he escaped: *Provided*, That nothing herein contained shall be construed as requiring the production of a transcript of such record as evidence as aforesaid. But in its absence the claim shall be heard and determined upon other satisfactory proofs, competent in law.

Approved September 18, 1850.

Charge of Judge Kane to the Grand Jury.

On the opening of the November Term, 1850, being the first term of the District Court of the United States for the Eastern District of Pennsylvania, after the passage of the "Fugitive Slave Law;" the following charge to the Grand Jury was delivered November 18, 1850, by JUDGE KANE.

Gentlemen of the Grand Jury:—It has not been customary in this District, for some years past, to open the sessions of the United States Courts, with a special charge to the Grand Jury. The experience of the gentlemen who have constituted that body, and the well understood character of the few crimes that called for their official action, have made it generally unnecessary. Circumstances, however, at the present time, justify a departure from our ordinary practice in this respect.

You are aware that, by one of the articles of the Federal Constitution, it is stipulated that persons "held to service or labor in one State under the laws thereof, escaping into another, shall be delivered upon claim of the party to whom such labor or service may be due." This constitutional provision was expanded into details by the Act of Congress of the 12th of February, 1793, which empowered the master or his agent, to seize or arrest the fugitive from labor, and take him before a Judge of the United States, or any magistrate of a county, city, or town corporate, who, on receiving proof of the facts, either by oral testimony or affidavit, was required to grant a certificate, having the effect of a warrant, for the removal of the fugitive.

It was a grave defect in this law that it left the master without the aid of process in the first instance, to impress the accustomed legal formalities upon the arrest which it authorized. The capture of the fugitive being without formal or apparent warrant, the right to make it, was of course readily, and in fact often, simulated; and the public sympathies in consequence enlisting themselves naturally on the side of the arrested party, the office of bringing the slave to the judicial forum became irksome, and even dangerous sometimes, from popular excitement. The master was therefore, under strong inducements to remove his slave without seeking the Judge's certificate; and thus his exercise of a legal right, made him still more liable to be confounded with the man-stealer, and the man-stealer found facilities in masking his crime.

These considerations, as some who hear me may remember, entered into the view of the Pennsylvania Legislature, when it passed the Act of 25th March, 1827. By that statute, the several judges and justices of the peace commissioned by the State, were authorized to issue warrants, upon the application of the master or his agent, under which the arrest was made by a sheriff or a constable; and the hearing took place before State Judges, who either gave the master a certificate recognizing his right, or discharged the prisoner.

By this Act, Pennsylvania aided effectively for the time in carrying out her constitutional engagement for the delivering up of fugitives from labor. I am not aware that while it continued in force, the master, in any considerable number of cases, encountered difficulties in asserting his right, or that injustice was done under its provisions to any one alleged fugitive; and certainly the peace of the community was not outraged, nor the dignity of the law insulted, as they have been since, by acts and threats of lawless force. It pleased the Legislature, however, in the spring of 1847, not only to repeal this statute, but also to inhibit the officers of the State, under very stern penalties, from aiding to execute the Act of Congress of 1798; moreover, to refuse the use of the public prisons for the detention of fugitives from labor, and even to denounce as a misdemeanor any attempt of the master, if attended with violence and tumult, to seize a fugitive, "either with or without the intention of taking him before a Judge of the United States Courts."

It is not my office to make any comment on the spirit or the terms of this statute of Pennsylvania. But I have the right to say, that its consequences have apparently been most unhappy—injurious to the master, perilous to the free black, and co-operating banefully with other causes, to menace that harmony between the States of the Union, without which the Union itself is scarcely a blessing. From the time of its enactment till the passing of the present Act of Congress, the master has been generally advised, and I think properly, to avoid the "tumult and violence" which would follow upon an attempt to carry his fugitive slave to the Judge at Pittsburg or Philadelphia, and to fall back instead, on his constitutional right of reclaiming him without a judicial hearing—a mode of reclamation always liable to popular misconception, and not unfrequently the provocative of wrong against the party resorting to it. On the other hand, the crime of kidnapping free negroes, made more secure from detection by the withdrawal from the rightful master, of the badge which distinguished him from the wrong-doer, has, if I am correctly informed, been perpetrated within our borders much more frequently than it was before. Fanatics of civil discord, have, meanwhile, exulted in the fresh powers of harm with which this state of things invested them; and the country has been convulsed in its length and breadth, as if about to be rent asunder, and tossed in fragments, by the outbursting of a volcano.

The Act of Congress of the present year does little more than reinstate the enactments of the Pennsylvania statute of 1826, with the sanction of a law of the United States. It authorizes the issue of warrants by the Federal Judges, and by the Commissioners who exercise the functions of justice of the peace under the laws of the United States, requires those officers to hear and adjudicate upon the case, and makes it the duty of the marshal and his deputies to execute their process. Just as the Pennsylvania statute authorized the State judges and justices to issue warrants, the State judges to hear and adjudicate, and the sheriffs and constables to execute.

These are, indeed, the only changes of any note which the Act of Congress has made. Its other provisions, except those of mere detail, are declaratory simply of the law as it stood before, or are in close analogy to safe and long established usages. Such is that clause, which excludes the arrested party from giving testimony in his own case; that which recognizes depositions and judicial records from the State whence the fugitive has escaped, as competent proofs on the question of extradition; and that which, for the purposes of the same question, at the summary hearing, regards an adjudication made ex parte in the Courts of that State, as conclusive on the point that a certain slave has escaped, and that the claimant was his lawful master, leaving open the question of the identity of the parties. Such, too, is the provision that the certificate or warrant of extradition shall not be hindered or delayed in its execution by the subsequent intervention of other Courts; and that which commands the posse comitatus in aid of the officers who are charged with process.

I have been led into these remarks by a desire that the provisions of this Act of Congress should be better understood than they seem to have been, by

some of our citizens. But it has not been my object to discuss its policy. It is the law. Its enactment was within the clearly expressed powers of Congress, or rather in direct obedience to a constitutional mandate. And its policy we have nothing to do with here. That has been passed upon by the people and the States, through their authorized representatives. Our duty, as citizens, now, is to obey it frankly and honestly, as a law of the land. Your duty and mine, gentlemen, as jurors and judge, is to see to it, that it is so obeyed, and that the legal penalties for violating it, are exacted and enforced, without fear, favor, or affection.

My object in referring to this Act at the opening of our criminal sessions, is to call your attention to certain enactments, by which its execution may be protected and enforced through the instrumentality of the Grand Jury. It is not that I apprehend the constitution, or the law, still less the Union of the States, to be in danger, from any acts, perpetrated, or likely to be perpetrated, in this District. We are here in the midst of a law-abiding community; which, exercising liberally, as I trust it always may, the right of discussion, and its attendant right of political reform, regards every law, so long as it remains unrepealed upon the statute book, as binding upon the acts and consciences of the whole people. We are in a community which has heretofore suffered in reputation and repose, more perhaps than any other of our day and country, from crimes of excitement, turbulence, and force; and a community, therefore, more determinate than others, whose experience has been less painful, can be, to secure domestic peace, by vindicating the supremacy of the laws.

We know that this law will be enforced here fairly, and according to its terms; and that it will be vindicated, no matter what the personal character of the men who may assail it, or what their profession or position in life, or their just influence on other topics with those who are about them. This law, I repeat it, will be enforced; and if broken, it will be vindicated. The constitutional compact, which was made within these very walls, will never be repudiated here.

I have alluded to unreserved discussion, as among the essential and characteristic rights of our countrymen. It may be even more, a duty; and yet there are limits beyond which, what is sometimes called discussion, is neither profitable nor lawful. To question, to debate, to determine upon the policy or the impolicy of a particular law, or a system of laws; to influence by argument or by appeals to feelings even, the action of those to whom the law-making power is entrusted by the constitution, or the judgment of the people of the States, who, by their votes, make the law-makers; all this is lawful, and may be praiseworthy. But to go further, and refuse obedience to a statute; to stimulate oppugnation to it while it stands in all the dignity of the "supreme law of the land;" to harass the officers of the law, while engaged in enforcing it; or to seek to deter them from attempting to do so, by denunciation or menaces of harm, or by pledges of immunity to deeds of violent resistance against them; this is neither the duty, nor the moral right, nor, as this Court gives you in charge, is it the legal right of any citizen.

There are several Acts of Congress which may be properly brought to your view in connection with this subject. The first of these, in the order of dates, is the Act of the 30th April, 1790, commonly called the Crimes Act (ch. 9.) The 22d section of this Act provides, that "if any person shall, knowingly and willfully, obstruct, resist, or oppose any officer of the United States, in serving, or attempting to serve, any mesne process or warrant, or any rule or order of any of the Courts of the United States, or any other legal or judicial writ or process whatsoever, every such person shall, on conviction, be imprisoned not exceeding twelve months, and fined not exceeding three hundred dollars. This section has been held by Judge Washington to comprehend all descriptions of process whatsoever, in the hands of an officer of the United States; and the offence of resistance to be complete where the party has refused to obey the officer according to his writ, whether the refusal was or was not accompanied by a breach of the peace. (2 W. C. C. R. 335.)

Another Act, is that of the 2d of March, 1831, (ch. 99,) of which the second section contains these words: "If any person shall corruptly, or by threats or force, endeavor to influence, intimidate, or impede any juror, witness, or officer, in any Court of the United States, in the discharge of his duty, or shall corruptly, or by threats or force, obstruct or impede, or endeavor to obstruct or impede, the due administration of justice therein, every person so offending, shall, on conviction, be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding three months, or both, according to the nature and aggravation of the offence."

Besides these, the Act of Congress of the 18th of September last, (ch. 60,) relates more particularly to the offence of obstructing the arrest of a fugitive from labor, and of rescuing or attempting to rescue him when arrested, or aiding him to escape from custody after arrest, or harboring or concealing him, so as to prevent his discovery and arrest, after knowledge or notice that he was such a fugitive; each of which offences, it subjects to a fine not exceeding one thousand dollars, and an imprisonment not exceeding six months.

If, gentlemen, it shall be brought to your knowledge that either of the offences which these Acts describe, has been committed within this district, either by resident citizens, or by strangers, it will be your duty, under the oaths and affirmations you have now taken, to bring the facts to the notice of the Court, either by an appropriate presentment, or by bills of indictment against the parties inculpated.

I am not judicially apprised, however, that any evidence will be laid before you, which should form the basis of such action on your part. We have, all of us, from time to time, heard rumors of popular gatherings in this and some of the adjoining counties, at which purposes are said to have been threatened, approaching more or less closely to crime. But I do not remember to have heard that any officer of the United States, or other person charged with process, has been resisted within the bounds of this district, or that the meetings around us, have gone further than the proclamation of some peculiar theories of political morals, and some vague and contingent menaces. And I would distinguish liberally, and I would have you to distinguish, between mere extravagance of diction, and the endeavor by threats or force, to obstruct the execution of the laws of the country.

I have now, gentlemen, completed in all frankness, the few observations which the occasion has seemed to me to call for. I submit them to you with the fullest assurance that they will be accepted by you in a kindred spirit, and that your deliberations and your action, on the interesting subject to which they relate, will be characterized by firmness, dignity, and above all, by an uncompromising devotion to the Constitution of the United States.

Judge Kane's charge to the Grand Jury.

This was followed on September 29, 1851, by the following Charge to the Grand Jury, by Judge Kane:—

Gentlemen of the Grand Jury—It has been represented to me, that since we met last, circumstances have occurred in one of the neighboring counties of our district, which should call for your prompt scrutiny, and perhaps for the energetic action of the Court.

It is said that a citizen of the State of Maryland, who had come into Pennsylvania to reclaim a fugitive from labor, was forcibly obstructed in the attempt by a body of armed men,—assaulted, beaten, and murdered:—that some members of his family, who had accompanied him in the pursuit, were at the same time and by the same party maltreated and grievously wounded: and that an officer of justice, constituted under the authority of this Court, who sought to arrest the fugitive, was impeded and repelled by menaces and violence, while proclaiming his character and exhibiting his warrant. It is said, too, that the time and manner of these outrages, their asserted object, the denunciations by which they were preceded, and the simultaneous action of most of the guilty parties, evinced a combined purpose forcibly to resist and make nugatory a constitutional provision, and the statutes enacted in pursuance of it:—and it is added, in confirmation of this, that for some months back gatherings of people, strangers as well as citizens, have been held from time to time in the vicinity of the place of the recent outbreak, at which exhortations were made and pledges interchanged to hold the law for the recovery of fugitive slaves as of no validity, and to defy its execution.

Such are some of the representations that have been made in my hearing, and in regard to which it has become your duty, as the Grand Inquest of the district, to make legal inquiry. Personally, I know nothing of the facts, or the evidence relating to them. As a member of the Court, before which the accused persons may hereafter be arraigned and tried, I have sought to keep my mind altogether free from any impressions of their guilt or innocence, and even from an extra-judicial knowledge of the circumstances which must determine the legal character of the offence that has been perpetrated. It is due to the great interests of public justice, no less than to the parties implicated in a criminal charge, that their cause shall be in no wise and in no degree prejudged. And in referring, therefore, to the representations which have been made to me, I have no other object than to point you to the reasons for my addressing you at this advanced period of our sessions, and to enable you to apply with more facility and certainty the principles and rules of law, which I shall proceed to lay before you.

If the circumstances to which I have adverted have in fact taken place, they involve the highest crime known to our laws. Treason against the United States is defined by the Constitution, Art. 3, Sec. 3, Cl. 1, to consist in "levying war against them, or in adhering to their enemies, giving them aid and comfort." This definition is borrowed from the ancient law of England, Stat. 25, Edw. 3, Stat. 5, chap. 2, and its terms must be understood, of course, in the sense which they bore in that law, and which obtained here when the Constitution was adopted. The expression "levying war," so regarded, embraces not merely the act of formal or declared war, but any combination forcibly to prevent or oppose the execution or enforcement of a provision of the Constitution or of a public Statute, if accompanied or followed by an act of forcible opposition in pursuance of such combination. This, in substance, has been the interpretation given to these words by the English judges, and it has been uniformly and fully recognized and adopted in the Courts of the United States. (See Foster, Hale and Hawkins, and the opinions of Iredell, Patterson, Chase, Marshall, and Washington, J. J., of the Supreme Court, and of Peters, D. J., in United States *vs.* Mitchell; United States *vs.* Fries; United States *vs.* Vollum and Swartwout, and United States *vs.* Burr.)

The definition, as you will observe, includes two particulars, both of them indispensable elements of the offence. There must have been a combination or conspiring together to oppose the law by force, and some actual force must have been exerted; or the crime of treason is not consummated.

The highest, or at least the direct proof of the combining may be found in the declared purposes of the individual party before the actual outbreak; or it may be derived from the proceedings of meeting, in which he took part openly, or which he either prompted, or made effective by his countenance or sanction,—commending, counselling and instigating forcible resistance to the law. I speak, of course, of conspiring to resist a law, not the more limited purpose to violate it, or to prevent its application and enforcement in a particular case, or against a particular individual. The combination must be directed against the law itself.

But such a direct proof of this element of the offence is not legally necessary to establish its existence. The concert of purpose may be deduced from the concerted action itself, or it may be inferred from facts concurring at the time, or afterwards, as well as before.

Besides this, there must be some act of violence, as the result or consequence of the combining. But here, again, it is not necessary to prove that the individual accused was a direct, personal actor in the violence. If he was present, directing, aiding, abetting, counselling or countenancing it, he is in law guilty of the forcible act. Nor is even his personal presence indispensable. Though he be absent at the time of its actual perpetration, yet if he directed the act, devised or knowingly furnished the means for carrying it into effect, instigating others to perform it, he shares their guilt. In treason there are no accessories.

There has been, I fear, an erroneous impression on this subject among a portion of our people. If it has been thought safe to counsel and instigate others to acts of forcible oppugnation to the provisions of a statute,—to inflame the minds of the ignorant by appeals to passion, and denunciations of the law as oppressive, unjust, revolting to the conscience, and not binding on the actions of men,—to represent the Constitution of the land as a compact of iniquity, which it were meritorious to violate or subvert,—the mistake has been a grievous one; and they who have fallen into it may rejoice, if peradventure their appeals and their counsels have been hitherto without effect. The supremacy of the Constitution, in all its provisions, is at the very basis of our existence as a nation. He, whose conscience, or whose theories of political or individual right forbid him to support and maintain it in its fullest integrity, may relieve himself from the duties of citizenship by divesting himself of its rights. But while he remains within our borders, he is to remember that successfully to instigate treason is to commit it.

I shall not be supposed to imply in these remarks that I have doubts of the law-abiding character of our people. No one can know them well without the most entire reliance on their fidelity to the Constitution. Some of them may differ from the mass, as to the rightfulness or the wisdom of this or the other provision, that is found in the federal compact,—they may be divided in sentiment as to the policy of a particular statute, or of some provision in a statute;—but it is their honest purpose to stand by the engagements, all the engagements which bind them to their brethren of the other States. They have but one country, they recognize no law of higher social obligation than its Constitution and the laws made in pursuance of it; they recognize no higher appeal than to the tribunals it has appointed; they cherish no patriotism that looks beyond the Union of the States.

That there are men here, as elsewhere, whom a misguided zeal impels to violations of law,—that there are others who are controlled by false sympathies, and some who yield too readily and too fully to sympathies not always false, or, if false, yet pardonable, and become criminal by yielding,—that we have not only in our jails and alms-houses, but congregated here and there, in detached portions of the State, ignorant men, many of them without political rights, degraded in social position, and instinctive of revolt,—all this is true. It is proved, by the daily record of our public courts, and by the ineffective labors of those good men among us, who seek to detach want from temptation, passion from violence, and ignorance from crime. But it should not be supposed, that any of these represent the sentiment of Pennsylvania, and it would be to wrong our people sorely, to include them in the same category of personal, social, or political morals.

It is declared in the article of the Constitution which I have already cited, that "no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open Court." This and the corresponding language in the Act of Congress of the 30th of April, 1790, seems to refer to the proofs on the trial, and not to the preliminary hearing before the committing magistrate, or the proceeding before the Grand Inquest. There can be no conviction after arraignment on bill found. The previous action in the case is not a trial, and cannot convict, whatever be the evidence or the number of witnesses. I understand this to have been the opinion entertained by Chief Justice Marshall, 1 Burr's Trial, 196; and though it differs from that expressed by Judge Iredell, on the indictment of Fries, 1 Whart. Am. St. Tr. 480. I feel authorized to recommend it to you, as within the terms of the Constitution, and involving no injustice to the accused.

I have only to add, that treason against the United States may be committed by any one resident or sojourning within its territory and under the protection of its laws, whether he be a citizen or an alien. Fost. C. L., 183, 5; 1 Hale, 59, 60, 62; 1 Hawk., ch. 17, § 5; Kel. 38.

Besides the crime of treason, which I have thus noticed, there are offences of minor grades, against the Constitution and the State, some or other of which may be apparently established by the evidence that will come before you. These are embraced in the Act of Congress, of the 30th Sept., 1790, ch. 9, sec. 22, on the subject of obstructing or resisting the service of legal process, the Act of the 2d of March, 1831, ch. 99, sec. 2, which secures the jurors, witnesses, and officers of our Courts in the fearless, free, and impartial administration of their respective functions,—and the Act of the 18th of September, 1850, ch. 60, which relates more particularly to the rescue or attempted rescue of a fugitive from labor. These Acts were made the subject of a charge to the Grand Jury of this Court in November last, of which I shall direct a copy to be laid before you; and I do not deem it necessary to repeat their provisions at this time.

Gentlemen of the Grand Jury: You are about to enter upon a most grave and momentous duty. You will be careful, in performing it, not to permit your indignation against crime, or your just appreciation of its perilous consequences, to influence your judgment of the guilt of those who may be charged before you with its commission. But you will be careful, also, that no misguided charity shall persuade you to withhold the guilty from the retributions of justice. You will inquire whether an offence has been committed, what was its legal character, and who were the offenders,—and this done, and this only, you will make your presentments according to the evidence and the law.

Your inquiries will not be restricted to the conduct of people belonging to our own State. If in the progress of them, you shall find that men have been among us, who, under whatever mask of conscience or of peace, have labored to incite others to treasonable violence, and who, after arranging the elements of the mischief, have withdrawn themselves to await the explosion they had contrived, you will feel yourselves bound to present the fact to the Court; and however distant may be the place in which the offenders may have sought refuge, we give you the pledge of the law that its far-reaching energies shall be exerted to bring them up for trial,—if guilty, to punishment.

The offence of treason is not triable in this Court. But, by an Act of Congress, passed on the 8th of August, 1846, ch. 98, it is made lawful for the Grand Jury, impannelled and sworn in the District Court, to take cognizance of all indictments for crimes against the United States, within the jurisdiction of either of the Federal Courts of the District. There being no Grand Jury in attendance at this time in the Circuit Court, to pass upon the accusations I have referred to in the first instance, it has fallen to my lot to assume the responsible office of expounding to you the law in regard to them. I have the satisfaction of knowing, that if the views I have expressed are in any respect erroneous, they must undergo the revision of my learned brother of the Supreme Court, who presides in this Circuit, before they can operate to the serious prejudice of any one; and that if they are doubtful even, provision exists for their re-examination in the highest tribunal of the country.

THE GRAND JURY WAS COMPOSED AS FOLLOWS:

Grand Inquest for the United States, inquiring for the Eastern District of Pennsylvania. August Term, 1851.

Thomas B. Florence, Foreman; John H. Diehl, John Dolby, Benjamin Mifflin, Isaac Myer, Andrew Scott, Ambrose J. White, and Gerhard B. Wilstach, Samuel Castor, Waters Dewees, Abraham L. Gerhard, Nathan L. Keyser, Isaac Lamplugh, Charles T. Long, William G. Mentz, Adam Mintzer, Simon Mudge, George C. Rickards, Charles Stockton, and Alan Wood.

Who having retired under the charge of the Court, found true bills for treason against certain persons, viz:

No.	1.	United States	*v.*	Castner Hanway,
"	2.	"	"	Joseph Scarlet,
"	3.	"	"	Elijah Lewis,
"	4.	"	"	James Jackson,
"	5.	"	"	George Williams,
"	6.	"	"	Jacob Moore,
"	7.	"	"	George Reed,
"	8.	"	"	Benjamin Johnson,
"	9.	"	"	Daniel Caulsberry,
"	10.	"	"	Alson Pemsley,
"	11.	"	"	William Brown, *2nd.*
"	12.	"	"	Henry Green,
"	13.	"	"	Elijah Clark,
"	14.	"	"	John Holliday,
"	15.	"	"	William Williams,
"	16.	"	"	Benjamin Pindergrast,
"	17.	"	"	John Morgan,
"	18.	"	"	Ezekiel Thompson,
"	19.	"	"	Thomas Butler,
"	20.	"	"	Collister Wilson,
"	21.	"	"	John Jackson,
"	22.	"	"	William Brown,
"	23.	"	"	Isaiah Clarkson,
"	24.	"	"	Henry Sims,
"	25.	"	"	Charles Hunter,
"	26.	"	"	Lewis Gates,
"	27.	"	"	Peter Woods,
"	28.	"	"	Lewis Clarkson,
"	29.	"	"	Nelson Carter,
"	30.	"	"	William Parker,
"	31.	"	"	John Berry,
"	32.	"	"	William Berry,
"	33.	"	"	Samuel Williams,
"	34.	"	"	Josh Hammond,
"	35.	"	"	Henry Curtis,
"	36.	"	"	Washington Williams,
"	37.	"	"	William Thomas,
"	38.	"	"	Nelson Ford.

Which indictments were on October 6, 1851, remitted from the District Court to the Circuit Court, under the Act of Congress, approved August 8, 1846.

And now, October 6, 1851, on motion of John W. Ashmead, Attorney for the United States, the Court order and direct that a venire be issued, in each of the aforesaid cases, to the marshal, returnable on the fourth Monday of November next, commanding him to summon and return one hundred and eight jurors, for the trial of the parties, charged with levying war against the United States of America, in the indictments which have been remitted to this Court, by the District Court of the United States, for the Eastern District of Pennsylvania; and that twelve of the said jurors, so returned, in each case, be summoned and returned from the County of Lancaster, in this State; the offences of the said defendants being charged to have been perpetrated in the said County of Lancaster.

And thereupon, a *venire* was issued in the following form.

The United States of America, Eastern District of Pennsylvania. } *ss.*

The President of the United States, to the Marshal of the Eastern District of Pennsylvania.

[L.S.]

GREETING. We command you, that you cause to come before the *Judges of the Circuit Court of the United States*, in and for the Eastern District of Pennsylvania, in the Third Circuit, at a session of the said Court, to be holden at the City of Philadelphia, in the said District, *on the fourth Monday of November* next, hereafter ensuing, a number, not less than ONE HUNDRED AND EIGHT in all, of good, honest, and lawful men, of your said District, (and of whom, TWELVE at least, shall be of the County of Lancaster, in the said District,) of which said, good, honest, and lawful men, none shall be of affinity to Castner Hanway, Joseph Scarlet, Elijah Lewis, James Jackson, George Williams, Jacob Moore, George Reed, Benjamin Johnson, Daniel Caulsberry, Alson Pernsley, William Brown, *2nd.*, Henry Green, Elijah Clark, John Holliday, William Williams, Benjamin Pindergrast, John Morgan, Ezekial Thompson, Thomas Butler, Collister Wilson, John Jackson, William Brown, Isaiah Clarkson, Henry Sims, Charles Hunter, Lewis Gales, Peter Woods, Lewis Clarkson, Nelson Carter, William Parker, John Berry, William Berry, Samuel Williams, Joshua Hammond, Henry Curtis, Washington Williams, William Thomas, or Nelson Ford, late of the said District, to recognize upon their oaths and affirmations as PETIT JURORS, whether the said Castner Hanway, Joseph Scarlet, Elijah Lewis, James Jackson, George Williams, Jacob Moore, George Reed, Benjamin Johnson, Daniel Caulsberry, Alson Parnsley, William Brown, *2nd.* Henry Green, Elijah Clark, John Holliday, William Williams, Benjamin Pindergrast, John Morgan, Ezekiel Thompson, Thomas Butler, Collister Wilson, John Jackson, William Brown, Isaiah Clarkson, Henry Sims, Charles Hunter, Lewis Gales, Peter Woods, Lewis Clarkson, Nelson Carter, William Parker, John Berry, William Berry, Samuel Williams, Joshua Hammond, Henry Curtis, Washington Williams, William Thomas, or Nelson Ford, late of the said District, or any or either of them be guilty of certain treasons against the United States, whereof they severally stand charged, in certain indictments now pending in the said Court, and to be tried at the bar thereof, or not guilty; and also to do, execute, and perform, all and singular those matters and things, which, on behalf of the United States, shall then and there be required of them. And have you then and there, the names and addition, and places of abode of the said good, honest, and lawful men, whom you shall so cause to come. And be you then there, together with your ministers, to do those things which pertain to your office. And bring with you their writ.

Witness the Honorable ROGER B. TANEY, Chief Justice of the Supreme Court of the United States, at Philadelphia, this ninth day of October, A. D. 1851, and in the seventy-sixth year of the independence of the said United States. GEORGE PLITT,

Clerk of the Circuit Court.

To which the Marshal makes return:

To the Honorable, the Judges of the Circuit Court of the United States, in and for the Eastern District of Pennsylvania.

I do certify, that I have summoned and commanded one hundred and sixteen good, honest, and lawful men, of the Eastern District of Pennsylvania, to serve as *Petit Jurors*, and the names and surnames of the persons so summoned, with their additions, respectively are in a panel hereto annexed.

So answers and certifies,

A. E. ROBERTS, *Marshal.*

Panel of Petit Jurors, selected and returned in pursuance of a special venire, for October Session, Anno Domini, 1851.

To be holden on Monday, November 24th, 1851, at eleven o'clock, A.M., at the United States Court Room, (Independence Hall,) Chestnut street, between Delaware Fifth and Sixth streets, in the City of Philadelphia.

1 Adams, Peter, Farmer, Mohrsville P.O., Berks County.
2 Baldwin, Matthias W., Machinist, 335 Spruce Street, Philadelphia.
3 Barclay, Andrew C., Gentleman, 147 Arch Street, Philadelphia.
4 Bazley, John T., Gentleman, Doylestown, Bucks County.
5 Beck, John, Professor, Litiz, Lancaster Co.
6 Bell, Samuel, Gentleman, Reading, Berks Co.
7 Brady, Patrick, Merchant, 397 Arch Street, Philadelphia.
8 Breck, Samuel, Gentleman, Arch Street, west of Broad, Philadelphia.
9 Brinton, Ferree, Merchant, Belmont P.O., Lancaster Co.
10 Brodhead, Albert G., Farmer, Delaware, P.O., Pike Co.
11 Brown, John A., Merchant, S. E. corner Twelfth and Chestnut Streets, Phila.
12 Brown, Joseph D., Gentleman, 167 Arch Street, Philadelphia.
13 Brush, Goerge G., Merchant, Washington, Lancaster Co.
14 Butler, Robert, Clerk, Mauch Chunk, Carbon County.
15 Cadwalader, George, Gentleman, 299 Chestnut Street, Philadelphia.
16 Cameron, Simon, Gentleman, Middletown, Dauphin Co.
17 Campbell, Hugh, Merchant, 33 Girard Street, Philadelphia.
18 Clendenin, John, Gentleman, Hoagstown, Cumberland County.
19 Cockley, David, Machinist, Lancaster City.
20 Cook, Jonathan, Gentleman, Allentown, Lehigh County.
21 Coolbaugh, Moses W., Farmer, Coolbaugh P.O., Monroe County.
22 Connelly, Thomas, Carpenter, Beaver Meadow, Carbon County.
23 Cope, Caleb, Merchant, Walnut and Quince Streets, Philadelphia.
24 Cowden, James, Merchant, Columbia, Lancaster County.
25 Culbertson, Joseph, Gentleman, Chambersburg, Franklin County.
26 Darby, John, Gentleman, Fayetteville, Franklin County.
27 Davies, Edward, Gentleman, Churchtown, Lancaster Co.
28 Deshong, John O., Gentleman, Chester, Delaware County.
29 Diller, Solomon, Farmer, New Holland, Lancaster County.
30 Elder, Joshua, Farmer, Harrisburg, Dauphin County.
31 Dillinger, Jacob, Gentleman, Allentown, Lehigh County.
32 Elliot, Robert, Farmer, Ickesburg, Perry Co.
33 Ewing, Robert, Merchant, 446 Walnut Street, Philadelphia.
34 Fenton, Ephraim, Farmer, Upper Dublin, P.O., Montgomery Co.
35 Fraley, Frederick, Gentleman, 365 Race Street, Philadelphia.
36 George, David, Gentleman, Blockley, West Philadelphia P.O., Philadelphia Co.
37 Gowen, James, Gentleman, Germantown, Philadelphia Co.
38 Grosh, Jacob, Gentleman, Marietta, Lancaster County.
39 Hammer, Jacob, Merchant, Orwigsburg, Schuylkill Co.
40 Harper, James, Gentleman, Walnut and Schuylkill Fifth Streets, Philadelphia.
41 Hazard, Erskine, Gentleman, Ninth and Chestnut Streets, Philadelphia.
42 Hipple, Frederick, Farmer, Bainbridge, Lancaster County.
43 Hitner, Daniel O., Farmer, Whitemarsh, Montgomery County.
44 Hopkins, James M., Farmer, Buck P. O., Drumore Township, Lancaster County.
45 Horn, John, Gentleman, 16 Broad Street, Phila.
46 Hummel, Valentine, Merchant, Harrisburg, Dauphin Co.
47 Jenks, Michael H., Gentleman, Newton, Bucks County.
48 Junkin, John, Farmer, Landisburg, Perry Co.
49 Keim, William H., Merchant, Reading, Berks County.
50 Keyser, Elhanan W., Merchant, 144 North Ninth Street, Philadelphia.
51 Kichline, Jacob, Farmer, Lower Saucon P. O., Northampton Co.
52 Kinnard, John H., Farmer, West Whiteland, P.O., Chester Co.
53 Krause, John, Clerk, Lebanon, Lebanon Co.
54 Kuhn, Hartman, Gentleman, 314 Chestnut Street, Philadelphia.
55 Ladley, George, Farmer, Oxford P.O., Chester County.
56 Leiper, George G., Farmer, Leiperville, Delaware Co.
57 Lewis, Lawrence, Gentleman, 345 Chestnut Street Philadelphia.
58 Luther, Diller, Gentleman, Reading, Berks Co.
59 Lyons, David, Farmer, Haverford P.O., Delaware Co.
60 McConkey, James, Merchant, Peachbottom P.O., York County.
61 McIlvaine, Abraham R., Farmer, Wallace P.O., Chester County.
62 McKean, Thomas, Gentleman, 356 Spruce St., Philadelphia.
63 Madeira, George A., Gentleman, Chambersburg, Franklin County.
64 Mark, George, Gentleman, Lebanon, Lebanon Co.
65 Martin, Peter, Surveyor, Ephrata P.O., Lancaster County.
66 Massey, Charles, Merchant, 170 Arch Street, Philadelphia.
67 Mather, Isaac, Farmer, Jenkintown, Montgomery County.
68 Merkle, Levi, Farmer, Shiremanstown, Cumberland County.
69 Michler, Peter S., Merchant, Easton, Northampton Co.
70 Miller, John, Gentleman, Reading, Berks Co.
71 Moore, Marmaduke, Merchant, 153 North Thirteenth Street, Philadelphia.
72 Morton, Sketchley, Farmer, Gibbon's Tavern, P.O., Delaware County.

73 Myers, Isaac, Merchant, Port Carbon, Schuylkill County.
74 Neff, John R., Merchant, 124 Spruce Street, Philadelphia.
75 Newcomer, Martin, Innkeeper, Chambersburg, Franklin Connty.
76 Newman, Solomon, Smith, Milford, Pike Co.
77 Palmer, Strange N., Editor, Pottsville, Schuylkill County.
78 Patterson, Robert, Merchant, S. W. corner Thirteenth and Locust Streets.
79 Penny, James, Farmer, Liberty Square P.O., Drumore Township, Lancaster County.
80 Platt, William, Merchant, 343 Chestnut Street, Philadelphia.
81 Preston, Paul S., Merchant, Stockport, Wayne County.
82 Reynolds, John, Gentleman, Lancaster City.
83 Rich, Josiah, Farmer, Danboro P.O., Bucks County.
84 Richards, Matthias, Gentleman, Reading, Berks County.
85 Richardson, John, Gentleman, Spruce Street, west of Broad, Philadelphia.
86 Rogers, Evan, Gentleman, Locust Street and Washington Square.
87 Ross, Hugh, Farmer, Lower Chanceford P.O., York County.
88 Rupp, John, Farmer, Mechanicksburg P.O., Hampden Township, Cumberland County.
89 Rutherford, John B., Farmer, Harrisburg, Dauphin County.
90 Saddler, William R., Farmer, York Sulphur Springs P.O., Adams County.
91 Saylor, Charles, Merchant, Saylorsburg, Monroe County.
92 Schroeder, John S., Clerk, Reading, Berks County.
93 Small, Samuel, Merchant, York, York County.
94 Smith, George, Farmer, Upper Darby P.O., Delaware County.
95 Smith, John, Smith, Jenkintown, Montgomery County.
96 Smith, Robert, Gentleman, Gettysburg, Adams County.
97 Smyser, Philip, Gentleman, York, York County.
98 Starbird, Franklin, Farmer, Stroudsburg, Monroe County.
99 Stavely, William, Farmer, Lahasha P.O., Bucks County.
100 Stevens, William, Merchant, Whitehallville, Bucks County.
101 Stokes, Samuel E., Merchant, 39 Arch Street, Philadelphia.
102 Taylor, Caleb N., Farmer, Newportville, Bucks County.
103 Toland, George W., Gentleman, 178 Arch Street, Philadelphia.
104 Trexler, Lesher, Gentleman, Allentown, Lehigh County.
105 Wainwright, Jonathan, Merchant, Beach, below Hanover Street, Philadelphia.
106 Walsh, Robert F., Merchant, 5 Girard Street, Philadelphia.
107 Watmough, John G., Gentleman, Germantown, Philadelphia County.
108 Watson, William, Farmer, Mechanicsville, Bucks County.
109 West, David, Farmer, Kimberton, Chester Co.
110 White, Thomas H., Gentleman, N.W. corner of Ninth and Spruce Streets, Philadelphia.
111 Whitehall, James, Gentleman, Lancaster City.
112 Witman, Andrew K., Farmer, Centre Valley P.O., Lehigh County.
113 Williamson, William, Gentleman, West Chester, Chester County.
114 Wilson, James, Gentleman, Fairfield P.O., Adams County.
115 Vanzant, Franklin, Farmer, Attleboro P.O., Bucks County.
116 Yohe, Samuel, Gentleman, Easton, Northampton County.

Names, age, occupation, and residence of the Jurors, impannelled to try the case of the United States v. Hanway.

JAMES WILSON,	Gentleman,	Adams County,	age	73	years
ROBERT ELLIOTT,	Farmer,	Pike	"	69	"
JONATHAN WAINWRIGHT,	Merchant,	Philadelphia County,	"	66	"
ROBERT SMITH,	Gentleman,	Adams	"	57	"
JOHN JENKIN,	Farmer,	Perry	"	56	"
THOMAS CONNELLY,	Carpenter,	Carbon	"	54	"
EPHRAIM FENTON,	Farmer,	Montgomery	"	52	"
SOLOMON NEWMAN,	Smith,	Pike	"	48	"
PETER MARTIN,	Surveyor,	Lancaster	"	46	"
WILLIAM R. SADLER,	Farmer,	Adams	"	41	"
JAMES M. HOPKINS,	Farmer,	Lancaster	"	50	"
JAMES COWDEN,	Merchant,	Lancaster	"	36	"
	AVERAGE AGE OF JURORS,			53	"

Statement of the points of law, decided by the Court, during this Trial.

1. In conducting the challenges, the practice is for the defendant first to challenge; and if he makes no challenge, the prosecution may then address the juror, such questions for testing his impartiality as the court may approve.

2. In case of the juror not being set aside for favor upon his answers to such questions, he may nevertheless be set aside by the prosecution until the panel be exhausted.

3. When the panel is exhausted, however, such set aside juror must be sworn, unless sufficient cause for his rejection be shown defendant.

4. The defendant not having exercised his right of peremptory challenge, when the juror was first before the court, being considered to have waived it, he cannot exercise it when the juror is recalled. (pp. 22, 43.)

The following questions were allowed by the court, and sustained as proper to be put to the jurors by the prosecution:

I. Have you any conscientious scruples upon the subject of capital punishment, so that you would not, because you conscientiously could not render a verdict of guilty, death being the punishment, though the evidence required such a verdict?

II. Have you formed or expressed any opinion relative to the matter now to be tried?

III. Are you sensible of any such prejudice or bias therein, as may affect your action as a juror?

IV. Have you formed or expressed any opinion as to the guilt or innocence of the accused, or of the other persons alleged to have participated with him in the offence charged against him in the indictment?

V. Have you heard any thing of this case which has induced you to make up your mind as to whether the offence charged in the indictment constitutes treason or not?

VI. Have you formed an opinion that the law of the United States, known as the Fugitive Slave Law of 1850, is unconstitutional, so that you cannot for that reason, convict a person indicted for a forcible resistance thereto, if the facts alleged in the indictment are proved and the court hold the statute to be constitutional. (p. 23.)

The defence were allowed to challenge for cause, a juror who had formed, but not expressed an opinion, that the offence of the prisoner was treason. (p. 25.)

It is not cause for challenge that the juror answers, "if this is not treason, I do not see how treason against the United States can be levied," the juror not having made up his mind upon the *law*, but to a certain inference that might arise from a statement of the law by the court. (p. 27.)

A juror whose mind is made up that the offence committed by the prisoner *is not* treason; is incompetent. (pp. 27, 28.)

The question allowed to be put are to be asked by the prosecution, not by the Court. (p. 30.)

Conscientious scruples as to capital punishment renders a juror incompetent. (p. 30.)

A juror who says he has made up his mind "as to the subject of treason, provided the facts are proved against the prisoner, not as to the guilt of the prisoner," is incompetent. (p. 33.)

A juror who in reply to the question whether he has made up his mind, "whether the offence charged in the indictment constitutes treason or not,"

says, "I take it to be pretty near a similar case to the Fries' matter which happened at the place where I was from"—was held to be incompetent. (p. 39.)

It was held, however, not cause for challenge that the juror should think, "the laws were outraged at Christiana." (p. 39.)

So also it was no cause for challenge that the juror should have expressed an unfavorable opinion of "those gentlemen," the defendants and others alleged to have been concerned. (p. 41.)

The court directed that all witnesses who would be called to testify to the same state of facts, should be excluded during the examination of any one of them. (p. 55.)

The prosecution are bound to exhaust their questions to a witness on the examination in chief. Where, however, they have omitted any material point they may ask it, even after the cross-examination is finished. (p. 80.)

A witness recalled by the prosecution must only be examined as to *new matter*. To ask him to repeat what he said before is irregular. (p. 93.)

Evidence that a witness, in a previous examination, made the same statement as in the case at issue, and that neither statement agrees with others made when not upon oath, is irrelevant. (p. 84.)

1. Evidence of an asserted overt act, may be admitted as part of the *res gestae*, although the defendant is not connected therewith.

2. To prove a treasonable intent to resist the execution of the Fugitive Slave Law, it was held admissible to show antecedent preparation, to advise the parties connected with certain fugitive slaves, whose reclamation was sought, of the fact that process was about to issue against them. (p. 98.)

Evidence that the organization, alleged to be treasonable, arose from the fact that a feeling of insecurity existed among certain parties in a particular neighborhood, owing to previous successful attempts on the part of "kidnappers," was admitted. "There may be many ways of proving such a belief, none better, perhaps, than by proving the facts on which such belief was founded, and if the belief exists, it might be proved, though not founded on facts." (p. 114.)

The prosecution have no right to cross-examine as to matters not brought out by the examination in chief. "If you want the witness, you should produce him yourself." (p. 117.)

A party who is indicted jointly with the prisoner in another bill, but not in the present, is a competent witness for the defence. (p. 120.)

A witness whose testimony is sought to be impeached, has a right to be in Court, notwithstanding the rule excluding all witnesses. (p. 144.)

Evidence of previous good character of defendant may be introduced in a trial for treason. (p. 144.)

Newspaper paragraphs are not proper to be read in the opening of counsel. (p. 148.)

It is improper to ask, on cross-examination, of a witness who has been called to sustain the character of a previous witness, whether he "ever heard that he was a pickpocket in New York." "The question assumes the fact, and leaves the inference that it exists by asking the witness if he heard it."

Testimony that would have been evidence in chief cannot be introduced in rebuttal of collateral matter introduced by the defence, although the existence of the evidence was not known to the prosecution before their case closed. (p. 162.)

To show that the intent was not treasonable, the defence produced evidence of a man being carried off without process, in the night-time, and endeavored to explain the organization by that fact. The prosecution offered to show in rebuttal that the man so carried off, was a slave, which was ruled out. (p. 164.)

In order to a conviction of the crime of treason, the defendant must have *intended* to levy war against the United States, or the overt acts have been committed by himself and others in pursuance of such conspiracy or preconcert for that purpose; and the determination of this is for the jury, under the direction of the court. *Charge of Judge Grier*, p. 241.

The crime of treason is not to be extended by construction to doubtful cases. *Ibid.*

The "levying war against the United States," is not necessarily to be judged of by the number and array of troops. But there must be a conspiracy to resist by force, and an actual resistance by force of arms, or intimidation by numbers. The conspiracy and the insurrection connected with it must be to affect something of a *public nature*, to overthrow the government, or to nullify some law of the United States, and totally to hinder its execution, or compel its repeal. *Ibid.*

The combination of a number of persons to resist by force the execution of a particular law against any of themselves, is not of itself treason, though riot or murder be committed in carrying it into effect. (p. 247.)

Treason is a mixed question of law and fact. *Ibid.*

In treason all are principals, and a defendant may be guilty of aiding and abetting therein, though not present at any overt act. *Ibid.*

But where a number of persons are engaged in a traitorous resistance to the execution of an act of the United States—in the particular case the Fugitive Slave Act—and a person is present at the time, without having any previous knowledge of what was about to take place, and takes no part therein, or if he merely stands neutral through fear of bodily harm, or because he is conscientiously scrupulous about assisting to arrest a fugitive from labor, and, therefore, merely refuses to interfere, without encouraging, aiding, and abetting the offenders, he is not guilty of treason, though he may be liable to punishment for his refusal to interfere, by fine and imprisonment. *Ibid.*

Congress has no power to enlarge, restrain, construe, or define the offence of treason; the construction of the article in the constitution is entrusted to the courts alone. *Ibid.*

The owner of certain fugitive slaves, accompanied by an officer with a warrant for their arrest, under the act of 1850, and by some other persons, went about daybreak to a house in which the slaves were secreted, and demanded their delivery, the warrant being read. On their approach, a signal was given, and in a short time a large number of armed negroes collected, by whom they were attacked, the owner of the slaves killed, and others wounded. There was no proof of any previous conspiracy to make a *general and public resistance* to the act of Congress, nor that the negroes had a knowledge of the existence of the act, or had any other object than mutual protection from capture. It appeared, also, that on several previous occasions negroes had been seized at night, in their houses, as slaves, without process or any authority from their alleged masters. *Held*, not to be treason. *Ibid.*

A defendant, after acquittal, is not entitled to demand of the United States, pay for the witnesses summoned for his defence. (p. 260–61.)